



MODEL LAWS FOR A SAFER AMERICA

Seven Regulations to Promote Responsible Gun Ownership and Sales



A Publication of
Legal Community Against Violence

expertise, information & advocacy
to end gun violence

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*The views expressed in this publication are those of Legal Community Against Violence.
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Table of Contents

I. Introduction	1
A. America’s Gun Violence Epidemic	1
B. How to Use This Publication	2
C. About LCAV	3
II. Model Laws	
A. Model Law Requiring Background Checks on All Gun Purchasers	6
B. Model Law Requiring the Licensing of Firearm Owners	14
C. Model Law Requiring the Registration of Firearms	26
D. Model Law Regulating Firearms Dealers and Ammunition Sellers	38
E. Model Law Requiring the Reporting of Lost or Stolen Firearms	57
F. Model Law Imposing a Waiting Period Prior to the Sale of a Firearm	62
G. Model Law Limiting Firearm Purchases to One Per Person Every 90 Days	67
III. Legal Challenges & Other Opposition Arguments	73
IV. Appendix – Generic Provisions	80

I. Introduction

Legal Community Against Violence (LCAV) has published *Model Laws for a Safer America: Seven Regulations to Promote Responsible Gun Ownership and Sales* to assist elected officials and activists seeking to address our nation's deadly epidemic of gun violence. As discussed below, although guns kill or injure more than 100,000 Americans every year, our federal gun laws are incredibly weak – weaker than those of any other industrialized nation. This publication provides model laws for state or local governments seeking to fill these deadly gaps in our federal regulatory system.

A. America's Gun Violence Epidemic

In 2007, the most recent year for which statistics are available, more than 31,000 Americans died from firearm-related injuries¹ – an average of more than 85 deaths each day – and nearly 70,000 others were treated for non-fatal gunshot wounds in hospital emergency rooms.² On average, over 46 gun suicides were committed each day for the years 2001-2007.³ During that period, almost 5,000 people died from unintentional shootings.⁴ In 2007, guns were used to commit over 385,000 crimes, and nearly 70% of all murders that year were committed with a firearm.⁵

Americans own an estimated 270 million to 290 million guns.⁶ Although the U.S. has less than 5% of the world's population, Americans possess 35% to 50% of all guns in civilian hands.⁷ More than 30% of households in the U.S. have at least one gun, although household gun ownership has gradually trended downward since the late 1970s.⁸ A recent survey found that U.S. gun ownership has dropped more than 40% over the past few decades – from a high of 54% in 1977 to a low of 32.3% in 2010.⁹ Other surveys show that 48% of all individual gun owners, or 13% of the adult population, report owning four or more guns, and the 20% who owned the most guns possessed about 65% of the nation's privately-owned firearms.¹⁰

Gun violence burdens the American public with overwhelming medical, legal and societal costs. Medical costs alone related to gun violence have been estimated at \$2.3 billion annually, half of which are borne by American taxpayers.¹¹ When all direct and indirect medical, legal and societal costs are included, the estimated annual cost of gun violence in our nation amounts to \$100 billion.¹²

Despite these staggering statistics, U.S. gun laws are extremely weak. In fact, America's gun laws remain the weakest of all developed, and many developing, nations.¹³ Federal law does not, for example:

- Impose background checks on all gun purchasers. Federal law only requires federally licensed gun dealers to conduct background checks, exempting private sellers (responsible for an estimated 40% of all gun sales). Because of this “private sale” loophole, criminals and other prohibited persons can easily buy guns in most states;
- Require that firearm owners be licensed or register their guns. Licensing laws help ensure that gun owners know how to safely operate and store a firearm, and are familiar with firearms laws; registration laws help law enforcement officials trace crime guns,

disarm persons prohibited from possessing guns, and return lost or stolen firearms to their lawful owners;

- Require firearms dealers or ammunition sellers to, among other things: conduct employee background checks, implement security requirements, obtain liability insurance, and refrain from operating in residential neighborhoods or near schools, daycare centers, parks or other sensitive areas;
- Obligate firearm owners to report to law enforcement if their guns are lost or stolen. Such laws help deter and prosecute criminals and gun traffickers who often falsely claim that crime guns traced to them were lost or stolen, and increase gun owner accountability;
- Limit the number of firearms that may be purchased at any one time, helping to prevent gun traffickers from buying guns in bulk and reselling them to prohibited purchasers; or
- Impose a waiting period, allowing sufficient time for the completion of a background check and provide a “cooling off” period to help prevent impulsive acts of violence.

The model laws in this publication address each of these dangerous limitations of federal law.

B. How to Use This Publication

Model laws provide a starting point – a framework from which state or local legislation may be drafted, debated and, ultimately, adopted. A jurisdiction seeking to enact any of these model laws must integrate them with existing laws, and any jurisdiction considering firearms legislation should seek the advice of legal counsel. LCAV is available to provide assistance to any jurisdiction seeking to tailor a model law to its particular needs.

Each model law contains detailed findings regarding the need for, and benefits of, the specific law. Findings in support of a law are most effective, however, when they are specific and localized. Data should be added that is specific to the jurisdiction adopting the law, including data of particularly relevant incidents of gun violence, as well as general data from law enforcement, government, and the public health community.

Section II of this publication contains seven model laws which provide an essential framework for a state or local government seeking to reduce gun violence. Each of these models, in effect in some form in one or more jurisdictions in the U.S., regulates a crucial aspect of the sale or ownership of firearms and ammunition:

- **The Model Law Requiring Background Checks on All Gun Purchasers** requires that all gun sales be processed through a licensed firearms dealer, who must conduct a background check and create a record of the transfer. **This model law provides the foundation for the other models in this publication;**
- **The Model Law Requiring the Licensing of Firearm Owners** requires firearm owners to obtain a license, after safety training and testing, prior to the purchase of a firearm;

- **The Model Law Requiring the Registration of Firearms** requires firearm owners to register each firearm they own with law enforcement and to renew the registration(s) annually;
- **The Model Law Regulating Firearms Dealers and Ammunition Sellers** obligates firearms and ammunition sellers to obtain a license and fulfill other requirements designed to ensure that such businesses operate responsibly;
- **The Model Law Requiring the Reporting of Lost or Stolen Firearms** requires firearm owners to report to law enforcement if any of their firearms are lost or stolen;
- **The Model Law Imposing a Waiting Period Prior to the Sale of a Firearm** requires 10 days to elapse before a firearm purchaser may take physical possession of the gun;
- **The Model Law Limiting Firearm Purchases to One Per Person Every 90 Days** prohibits the purchase of more than one firearm per person within a 90-day period.¹⁴

Section III summarizes many of the legal issues presented by, and opposition arguments to, state and local firearms and ammunition laws.¹⁵ Finally, the Appendix provides general findings regarding gun violence in America, as well as definitions, penalties and other provisions applicable to all the model laws.

C. About LCAV

LCAV is a national law center formed in the wake of the July 1, 1993 assault weapon massacre at a law firm in downtown San Francisco. LCAV is proud to provide the legal expertise, information and advocacy that help community leaders advance effective, legally-defensible reforms. In addition to developing model laws and assisting in the drafting of firearms laws, LCAV:

- Tracks the latest developments in all state firearms legislation nationwide;
- Conducts legal and policy research and analysis;
- Testifies at public hearings in support of or in opposition to gun legislation;
- Monitors all Second Amendment litigation nationwide;
- Arranges for *pro bono* litigation assistance, for example, when a local government is sued following the adoption of a violence prevention ordinance; and
- Files *amicus curiae* (“friend of the court”) briefs in support of governmental entities and individuals in firearm-related litigation.

LCAV’s web site, www.lcav.org, provides detailed summaries of federal and state gun laws, as well as summaries of local gun laws in specific states. The site offers an in-depth discussion of the Second Amendment to the U.S. Constitution and examines over 30 firearm-related policies.

LCAV is available to provide assistance to jurisdictions seeking to draft a law or tailor one of the model laws to its particular needs. For more information or assistance, please contact LCAV at (415) 433-2062, or visit http://www.lcav.org/mail/request_assistance.asp.

LCAV is grateful to the donors and foundations whose encouragement and financial support enabled us to produce this publication, including The California Wellness Foundation, David Bohnett Foundation, The Wallace Alexander Gerbode Foundation, The Joyce Foundation, and the van Löben Sels/RembeRock Foundation.

Other LCAV publications include:

- [**Guns in Public Places: The Increasing Threat of Hidden Guns in America**](#)
- [**The 2010 Report: Recent Developments in Federal, State and Local Gun Laws**](#)
- [**Gun Laws Matter: A Comparison of State Firearms Laws and Statistics**](#)
- [**America Caught in the Crossfire: How Concealed Carry Laws Threaten Public Safety**](#)
- [**10 Myths About Gun Violence in America**](#)
- [**Gun Regulation and the Second Amendment**](#)
- [**Regulating Guns in America – An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws**](#)

¹ Nat'l Ctr. for Injury Prevention & Control, Ctrs. for Disease Control & Prevention, *Web-Based Injury Statistics Query and Reporting System (WISQARS) Injury Mortality Reports, 1999-2007*, http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html (last visited April 18, 2011).

² Nat'l Ctr. for Injury Prevention & Control, Ctrs. for Disease Control & Prevention, *Web-Based Injury Statistics Query and Reporting System (WISQARS) Nonfatal Injury Reports*, <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html> (last visited April 18, 2011).

³ *WISQARS Injury Mortality Reports, 1999-2007*, *supra* note 1.

⁴ *Id.*

⁵ Bureau of Justice Statistics, U.S. Dep't of Justice, *Key Facts at a Glance: Crimes Committed with Firearms, 1973-2007*, <http://bjs.ojp.usdoj.gov/content/glance/tables/guncrimetab.cfm> (last updated June 29, 2011).

⁶ Graduate Inst. of Int'l Studies, Geneva, *Small Arms Survey 2007: Guns and the City* at 39 (Aug. 2007); Aaron Karp, *Completing the Count: Civilian Firearms, Small Arms Survey 2007: Guns and the City* at Annexe 1, (Aug. 2007), at <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2007/en/Small-Arms-Survey-2007-Chapter-02-annexe-1-EN.pdf>. Because the U.S. does not have a national firearm registration system, it is necessary to estimate the number of guns in the hands of private owners.

⁷ See Garen Wintemute, *Inside Gun Shows: What Goes on When Everybody Thinks Nobody's Watching: Executive Summary 1* (2009), available at <http://www.ucdmc.ucdavis.edu/vprp/pdf/IGS/IGSexecsummweb.pdf> (noting that Americans owned an estimated 220 to 280 million guns in 2004, including at least 86 million handguns); and Graduate Inst. of Int'l Studies, Geneva, *supra* note 6, at 39 (stating that, globally, civilians own approximately 650 million firearms, with U.S. citizens owning 270 million guns).

⁸ Tom W. Smith, Nat'l Opinion Research Ctr. at the Univ. of Chi., *Public Attitudes Towards the Regulation of Firearms*, Figure 2 (Apr. 2007), available at <http://www-news.uchicago.edu/releases/07/pdf/070410.guns.norc.pdf>; see also Philip J. Cook & Jens Ludwig, *Guns in America: National Survey on Private Ownership and Use of Firearms*, U.S. Dep't of Justice, National Institute of Justice Research in Brief 1 (May 1997), at <http://www.ojp.usdoj.gov/nij/pubs-sum/165476.htm>.

⁹ Violence Policy Center, *A Shrinking Minority – The Continuing Decline of Gun Ownership in America 2*, (Apr. 2011) at <http://www.vpc.org/studies/ownership.pdf> (discussing results of the 2010 General Social Survey conducted by the National Opinion Research Center at the University of Chicago).

¹⁰ Lisa Hepburn et al., *The U.S. Gun Stock: Results from the 2004 National Firearms Survey*, 13 *Inj. Prev.* 15, 16 (2007); *see also* Philip J. Cook & Jens Ludwig, *supra* note 8, at 2 (finding only one-quarter of Americans actually own firearms, and that those with one gun often have several – 68% of handgun owners also owned at least one rifle or shotgun).

¹¹ Philip Cook et al., *The Medical Costs of Gunshot Injuries in the United States*, 282 *JAMA* 447 (Aug. 4, 1999).

¹² Philip J. Cook and Jens Ludwig, *Gun Violence: The Real Costs* 115 (2000).

¹³ Wendy Cukier & Victor Sidel, *The Global Gun Epidemic: From Saturday Night Specials to AK-47s* 131 (2006).

For in-depth firearm-related comparisons of the United States with the rest of the world, *see* Gun Policy.org, *United States – Gun Facts, Figures and the Law*, <http://www.gunpolicy.org/firearms/region/united-states>.

¹⁴ For other model laws, including laws regulating assault weapons and large capacity ammunition magazines, laws regulating the carrying and possession of firearms in public places, and a law requiring that handguns be “personalized” (equipped with technology to prevent firing except by an authorized user), please visit LCAV’s website, www.lcav.org.

¹⁵ As discussed in that Section, not all local governments have the authority to adopt laws regulating firearms and ammunition. Most states limit the ability of local jurisdictions, to varying degrees, to legislate in this area. Local jurisdictions should consult with counsel to determine the extent of their regulatory authority.

II. Model Laws

A. Model Law Requiring Background Checks on All Gun Purchasers

This model law requires all gun sales to be conducted through a federally licensed firearms dealer, so that a background check can be conducted on the prospective purchaser and a record created of each sale. The model law is intended to close the gap in federal law known as the “private sale” loophole. That loophole allows persons other than licensed gun dealers to sell firearms without complying with requirements applicable to licensed gun dealers. By mandating that all firearm sales be processed through a licensed dealer, the model law helps ensure that those requirements, and any other conditions that state or local law may impose, are met before any sale occurs.

As set forth in the findings below, background checks have been extremely effective in blocking felons, domestic abusers, the mentally ill and other legally prohibited purchasers from obtaining firearms. Since 1994, when federal law began requiring dealers to conduct background checks, over 1.9 million criminals and other prohibited persons across the United States have been prohibited from buying guns. Unfortunately, federal law and the laws of most states do not require an *unlicensed* seller to conduct a background check on a prospective firearm purchaser. Such “private sales” account for about 40% of all guns transferred. Gun traffickers take advantage of this loophole and sell firearms to prohibited purchasers. Federal, state, and local laws also impose requirements on licensed dealers that are generally inapplicable to unlicensed sellers, such as record-keeping requirements, which help law enforcement trace firearms that are later misused, lost or stolen.

Currently, only a handful of states have closed the private sale loophole and require universal background checks, despite the fact that the American public overwhelmingly supports such laws. A nationwide poll conducted in January 2011, for example, found that 86% of Americans, including 81% of gun owners, favor laws requiring every gun buyer to pass a background check, regardless of whether the seller is a licensed firearms dealer.

Law enforcement organizations also strongly support laws requiring background checks for all gun sales. In a 2007 report, the International Association of Chiefs of Police explained that, because individuals who fail a background check can readily access guns via private sales, “guns are far too easily acquired by prohibited possessors, and too often end up being used in gun crime and gun violence.” The report concludes that “Congress, as well as state, local and tribal governments, should enact laws requiring that all gun sales and transfers proceed through” a federally licensed dealer.

Laws requiring all firearm sales and transfers to be processed through a licensed dealer have the most potential to reduce gun-related deaths and injuries. They also help facilitate the enforcement of other strong gun laws. For this reason, the universal background checks model law provides the foundation for all other model laws in this publication.

Text of Model Law

CHAPTER 1 REQUIRING BACKGROUND CHECKS ON ALL GUN PURCHASERS

- Sec. 1 Legislative findings, purpose and intent**
- Sec. 2 Definitions**
- Sec. 3 All firearm transfers to be conducted through a licensed dealer**
- Sec. 4 Exceptions**
- Sec. 5 Penalties**
- Sec. 6 Severability**

Sec. 1 Legislative findings, purpose and intent

[General findings regarding gun violence throughout the U.S. are provided in the Appendix of this publication. Findings particular to this model law are provided below. However, findings in support of a law are most effective when they are specific and localized. Whenever possible, data from the jurisdiction adopting the law, including data from law enforcement, the public health community and descriptions of particularly relevant incidents, should be added.]

The [Legislative Body]^{*} hereby finds and declares:

- (a) Federal law requires anyone “engage[d] in the business” of selling firearms to obtain a federal firearms license.¹ Many individuals sell firearms without falling within the federal definition of “engaged in the business,” however.² It has been estimated that while 60% of all firearms sold in the U.S. are transferred by federally licensed dealers, the remaining 40% of guns are sold by unlicensed sellers.³
- (b) Federal law requires federally licensed firearms dealers, but not unlicensed sellers of firearms, to, among other things: (1) perform background checks on prospective firearm purchasers; and (2) maintain records of all firearm sales.⁴
- (c) Background checks are an extremely effective way to keep guns out of the hands of prohibited persons. Since the federal background check requirement was adopted in 1994, over 1.9 million criminals and other prohibited persons across the United States have been prohibited from buying guns.⁵ In 2010 alone, 70,972 gun transfers were denied using the federal background check system.⁶
- (d) Private firearm sales are a significant public safety concern. The gap in federal law that allows unlicensed individuals to sell firearms without background checks or recordkeeping is known as the “private sale” loophole.⁷ According to a November 2010 report from the U.S. Department of Justice, because of this loophole, “individuals prohibited by law from possessing guns can easily obtain them from private sellers and do so without any federal records of the transactions.”⁸
- (e) The Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) found that during one 29-month period, unlicensed sellers were involved in about one-fifth of illegal trafficking

investigations and associated with nearly 23,000 trafficked guns.⁹ Roughly 20% of gun trafficking investigations involve transfers by unlicensed sellers.¹⁰

(f) According to a 2010 report by Mayors Against Illegal Guns (a coalition of over 600 mayors that targets illegal guns nationwide),¹¹ states that do not require background checks for sales of handguns at gun shows are the source of crime guns recovered in other states at an average rate more than two and one-half times greater than states that do require such background checks.¹² None of the ten states that are most frequently the source of crime guns when population is taken into account have any universal background check or gun show background check requirement.¹³

(g) A June 2009 U.S. Government Accountability Office report detailing U.S. efforts to fight gun trafficking into Mexico found that U.S. government restrictions on collecting and reporting information on gun purchases, as well as the lack of background check requirements for private gun transfers, substantially contribute to the availability of U.S. firearms to Mexican cartels.¹⁴ ATF also concluded that the increased incidence of gun trafficking into Mexico is influenced by a readily accessible source of guns originating primarily in the secondary market, at U.S. gun shows, flea markets and other private sales locations.¹⁵

(h) Universal background checks reduce illegal trafficking and treat all transfers equally, whether the purchaser is at a gun shop, a gun show, or buying from a neighbor or from anyone else. Universal background checks help ensure that all persons buying guns are legally eligible to do so.

(i) In a 2007 report, the International Association of Chiefs of Police (IACP) explained that, because individuals who fail a background check can easily access firearms through private sales, “guns are far too easily acquired by prohibited possessors, and too often end up being used in gun crime and gun violence.” The report concluded that “Congress, as well as state, local and tribal governments, should enact laws requiring that all gun sales and transfers proceed through” a federally licensed dealer.¹⁶

(j) Laws requiring federally licensed dealers to record information about each sale or transfer of a firearm help law enforcement trace the owners of guns recovered in crimes, and remove guns from the hands of people who have been convicted of a crime or otherwise become ineligible to possess them.¹⁷

(k) The 2007 IACP report concluded that laws applying a record-keeping requirement to all firearm sales “allow law enforcement to trace the gun to the last point of sale should it be criminally misused, lost or stolen.” According to the report, guns that are not sold or transferred through a licensed gun dealer “become more difficult to trace if lost, stolen or criminally misused, making crimes involving them more difficult to solve.”¹⁸

(l) California,¹⁹ Rhode Island²⁰ and the District of Columbia²¹ have adopted universal background check laws that require licensed dealers or law enforcement agencies to conduct a background check on all prospective gun buyers. Connecticut,²² Maryland²³ and Pennsylvania²⁴

impose universal background checks on handgun purchasers. Colorado,²⁵ Illinois,²⁶ New York²⁷ and Oregon²⁸ require background checks with respect to all firearm sales at gun shows.

(m) Americans overwhelmingly support laws requiring background checks on all gun purchasers:

- A national survey conducted for Mayors Against Illegal Guns in January 2011 found that 86% of Americans – including 81% of gun owners – favor mandatory criminal background checks for all people purchasing guns.²⁹
- A nationwide poll conducted in early 2008 found that 87% of Americans, including 83% of gun owners, favor requiring anyone who sells guns to conduct criminal background checks on prospective purchasers.³⁰
- Polls conducted in five bellwether states (Arizona, Colorado, Indiana, Ohio and Virginia) in February 2011 found that more than 83% of respondents, including more than 75% of gun owners, in each of these states support laws requiring all gun purchasers to pass a background check.³¹

(n) It is the purpose and intent of the [Legislative Body] in enacting this Chapter to require all firearm sales in [Jurisdiction] to be processed through a licensed firearms dealer, who will conduct a background check and create a record of each sale. The [Legislative Body] believes this law will protect public safety by helping to keep guns out of the hands of felons, domestic abusers, the mentally ill, and other prohibited persons, and by aiding law enforcement efforts to solve gun crimes.

Sec. 2 Definitions

As used in this Chapter:

[The definitions of commonly used terms, such as “Firearm,” “Law enforcement,” “Licensed firearms dealer” and “Person,” which are included in the Appendix, should be included in this section.]

Sec. 3 All firearm transfers to be conducted through a licensed dealer

(a) No person shall sell or otherwise transfer a firearm unless:

- (1) The person is a licensed firearms dealer;
- (2) The purchaser or other transferee is a licensed firearms dealer; or
- (3) The requirements of subsection (b) are met.

(b) Where neither party to a prospective firearms transaction is a licensed firearms dealer, the parties to the transaction shall complete the sale or other transfer through a licensed firearms dealer as follows:

- (1) The seller or other transferor shall deliver the firearm to the dealer, who shall retain possession of the firearm until all legal requirements for the sale or other transfer have been met, including compliance with any state or local waiting periods;
- (2) The dealer shall process the sale or other transfer as if he or she were the seller or other transferor. The dealer shall comply with all requirements of federal, state, and local law that would apply if he or she were the seller or other transferor of the firearm;
- (3) The dealer shall conduct a background check on the purchaser or other transferee in accordance with 18 U.S.C. § 922(t) and state and local law and, if the transaction is not prohibited, deliver the firearm to that person after all other legal requirements are met;
- (4) If the dealer cannot legally deliver the firearm to the purchaser or other transferee, the dealer shall conduct a background check on the seller or other transferor in accordance with 18 U.S.C. § 922(t), and state and local law, and, if the return is not prohibited, return the firearm to that person;
- (5) If the dealer cannot legally return the firearm to the seller or other transferor, the dealer shall deliver the firearm to [local law enforcement] within 24 hours; and
- (6) The dealer may require the purchaser or other transferee to pay a fee covering the administrative costs incurred by the dealer for facilitating the transfer of the firearm, plus applicable fees pursuant to federal, state, and local law.

Sec. 4 Exceptions

Section 3 does not apply to:

- (a) Any law enforcement or corrections agency, or law enforcement or corrections officer acting within the course and scope of his or her employment or official duties;
- (b) A United States Marshal or member of the Armed Forces of the United States or the National Guard, or a federal official transferring or receiving a firearm as required in the operation of his or her official duties;
- (c) A gunsmith who receives a firearm solely for the purposes of service or repair, or the return of the firearm to its owner by the gunsmith;
- (d) A common carrier, warehouseman, or other person engaged in the business of transportation or storage, to the extent that the receipt of any firearm is in the ordinary course of business and not for the personal use of any such person;

- (e) A person who is loaned a firearm solely for the purpose of shooting at targets, if the loan occurs on the premises of a properly licensed target facility, and the firearm is at all times kept within the premises of the target range;
- (f) A person who is under 18 years of age who is loaned a firearm for lawful hunting or sporting purposes or for any other lawful recreational activity while under the direct supervision and control of a responsible adult;
- (g) A person who is 18 years of age or older who is loaned a firearm while the person is accompanying the lawful owner and using the firearm for lawful hunting or sporting purposes or for any other lawful recreational activity;
- (h) A person who acquired the firearm by operation of law upon the death of the former owner of the firearm within the preceding [60] days. At the end of the 60-day period, the person must either have lawfully transferred the firearm or must have contacted the Department to notify the Department that he or she has possession of the firearm and intends to retain possession of the firearm, in compliance with all federal, state and local laws;³² or
- (i) An adult family member of the lawful owner of the firearm if the owner resides with the family member but is not currently present in the residence, provided that the family member does not maintain control over the firearm for more than [14] consecutive days. This exception shall not apply if the owner or the family member knows or has reasonable cause to believe that federal, state, or local law prohibits the family member from purchasing or possessing firearms, or the owner knows or has reasonable cause to believe that the family member is likely to use the firearm for unlawful purposes.³³

For suggested language regarding Sections 5 – 6, Penalties and Severability, see the Appendix.

* Where the words “[Act/Ordinance],” “[Jurisdiction],” “[Legislative Body]” or similar variations appear, simply select the appropriate designation for your jurisdiction.

¹ 18 U.S.C. § 922(a)(1)(A).

² The Gun Control Act of 1968 provides that persons “engaged in the business” of dealing in firearms must be licensed. Although Congress did not originally define the term “engaged in the business,” it did so in 1986 as part of the McClure-Volkmer Act. That Act defined the term “engaged in the business,” as applied to a firearms dealer, as “a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms.” 18 U.S.C. § 921(a)(21)(C). Significantly, however, the term was defined to *exclude* a person who “makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms.” *Id.* Some private sellers take advantage of this dangerous loophole and sell guns to convicted criminals, minors and other prohibited persons.

³ Philip J. Cook & Jens Ludwig, *Guns in America: National Survey on Private Ownership and Use of Firearms*, U.S. Department of Justice, National Institute of Justice Research in Brief 6-7 (1997), available at <http://www.ncjrs.gov/pdffiles/165476.pdf>.

⁴ 18 U.S.C. §§ 922(t)(1), 923(g).

⁵ Michael Bowling et al., Bureau of Justice Statistics, U.S. Dep’t of Justice, *Background Checks for Firearm Transfers, 2009 - Statistical Tables*, tbl.1 (2010), available at <http://bjs.ojp.usdoj.gov/content/pub/html/bcft/2009/bcft09st.pdf>. These statistics cover the period March 1, 1994 – Dec. 31, 2009.

⁶ Criminal Justice Information Services Division, Federal Bureau of Investigation, U.S. Dep’t of Justice, *CJIS Annual Report 2010*, at 11 (2010), available at <http://www.fbi.gov/about-us/cjis/annual-report-2010>. These denials were out of 14 million NICS background checks in 2010. *Id.*

⁷ Although the private sale loophole is frequently referred to as the “gun show” loophole (because of the particular problems associated with gun shows), it applies to all private firearm sales, regardless of where they occur.

⁸ Evaluation and Inspection Division, Office of the Inspector General, U.S. Dep’t of Justice, *Review of ATF’s Project Gunrunner 10* (2010), available at <http://www.justice.gov/oig/reports/ATF/e1101.pdf>.

⁹ Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers*, at xi (2000), available at http://www.mayorsagainstillegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf.

¹⁰ *Id.*

¹¹ Mayors Against Illegal Guns, *Coalition Members*, at <http://www.mayorsagainstillegalguns.org/html/members/members.shtml> (last visited July 12, 2011).

¹² Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking 15* (2010), available at <http://www.tracetheguns.org/report.pdf>.

¹³ *Id.* at 6, 28.

¹⁴ U.S. Gov’t Accountability Office, *Firearms Trafficking: U.S. Efforts to Combat Arms Trafficking to Mexico Face Planning and Coordination Challenges* 24-27 (2009), available at <http://www.gao.gov/new.items/d09709.pdf>.

¹⁵ Statement Before the United States House of Representatives Committee on Foreign Affairs, Subcommittee on the Western Hemisphere by William Hoover, Assistant Dir. for Field Operations of the Bureau of Alcohol, Tobacco, Firearms and Explosives, ¶ 8 (Feb. 7, 2008), <http://foreignaffairs.house.gov/110/hoo020708.htm>.

¹⁶ Int’l Ass’n of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 14 (2007), available at <http://www.theiacp.org/LinkClick.aspx?fileticket=%2Fs0LiOkJK5Q%3D&tabid=87>.

¹⁷ 18 U.S.C. § 923(g); 27 C.F.R. §§ 478.124, 478.125.

¹⁸ IACP, *supra* note 16, at 14.

¹⁹ Cal. Penal Code §§ 12072(d), 12082.

²⁰ In Rhode Island, the background check requirement does not apply to persons licensed to carry a concealed handgun. R.I. Gen. Laws §§ 11-47-35 to 11-47-35.2.

²¹ D.C. Code Ann. §§ 7-2502.01, 7-2502.03, 7-2505.01, 7-2505.02.

²² Conn. Gen. Stat. § 29-33(c).

²³ Md. Code Ann., Pub. Safety §§ 5-101(r), 5-124(a), 5-130(j).

²⁴ 18 Pa. Cons. Stat. §§ 6111(b), 6111(c), 6111(f)(1) – (2).

²⁵ Colo. Rev. Stat. §§ 12-26.1-101 – 12-26.1-108.

²⁶ 430 Ill. Comp. Stat. 65/3, 65/3.1.

²⁷ N.Y. Gen. Bus. Law §§ 895 – 897; N.Y. Penal Law § 400.00.

²⁸ Or. Rev. Stat. §§ 166.432 – 166.441.

²⁹ American Viewpoint and Momentum Analysis for Mayors Against Illegal Guns, *Results From A National Survey of 1003 Registered Voters* 6 (2011), http://www.mayorsagainstillegalguns.org/downloads/pdf/maig_poll_01_18_2011.pdf.

³⁰ Greenberg Quinlan Rosner Research & The Tarrance Group for Mayors Against Illegal Guns, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* 3, 6, April 10, 2008, http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf.

³¹ Mayors Against Illegal Guns, *New Polls In Five Bellwether States Show Overwhelming Support To Fix Gun Background Check System*, Mayors Against Illegal Guns, March 2, 2011, <http://www.mayorsagainstillegalguns.org/html/media-center/pr020-11.shtml>.

³² LCAV recommends that such compliance include, at a minimum, undergoing a background check to ensure the possessor is not prohibited by law from owning or possessing the firearm. The person taking possession of the firearm should also submit a report to the Department containing information about the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm.

³³ A jurisdiction may wish to consider including additional sections, before the penalties and severability sections, on the following topics:

- **Prohibited Purchasers:** Federal law prohibits certain persons, such as felons, domestic abusers, and the mentally ill, from purchasing or possessing firearms, and authorizes states to prohibit firearm possession by other persons. Jurisdictions adopting this type of model law may wish to include a section prohibiting

additional classes of persons from purchasing firearms, such as those convicted of firearm-related violent misdemeanors or individuals with a history of drug or alcohol abuse.

- The Scope of the Background Check: While federal law requires federally licensed firearms dealers to conduct a background check on the purchaser prior to sale of a firearm, the few databases that federal law requires to be searched during that background check do not contain comprehensive information about persons prohibited from possessing firearms. As a result, a jurisdiction may wish to consider requiring dealers to contact the jurisdiction's law enforcement agency, who could conduct a more comprehensive background check on the purchaser prior to the sale of a firearm. States such as California, Illinois, New Jersey and Pennsylvania, among others, require dealers to contact state law enforcement for background check purposes.

LCAV is available to assist with the drafting of these provisions upon request.

B. Model Law Requiring the Licensing of Firearm Owners

This model law requires any person who purchases or possesses a firearm to obtain a license. The license will only be issued after the person has undergone hands-on safety training and passed performance-based tests showing that he or she knows how to safely load, unload, clean, store, and fire a gun. The person must also pass a written test demonstrating knowledge of relevant firearms laws. The written test must be repeated every three years, and the training course and performance-based test must be repeated every six years.

As discussed in the findings below, licensing laws help: 1) ensure that gun owners know how to safely use and store firearms, thereby reducing the number of unintentional shootings, firearm thefts, and incidents in which unauthorized persons, such as children and criminals, gain access to firearms; and 2) increase compliance with existing gun laws by requiring gun owners to demonstrate knowledge of those laws.

Although federal law does not require gun owners or purchasers to obtain a license, several states and a number of local jurisdictions have enacted licensing requirements. Public opinion polls show that Americans overwhelmingly support such laws. A nationwide poll conducted in May of 2001 found that 85% of respondents – including 73% of gun owners – favored laws requiring handgun purchasers to obtain a permit before buying a handgun. That poll also shows most Americans mistakenly believe that U.S. laws already require licensing of gun owners.

Text of Model Law

CHAPTER 1 REQUIRING THE LICENSING OF FIREARM OWNERS

Sec. 1	Legislative findings, purpose and intent
Sec. 2	Definitions
Sec. 3	Firearm owner's license requirement
Sec. 4	Ammunition purchase, possession, delivery
Sec. 5	Exceptions
Sec. 6	Application for a license
Sec. 7	Safety training requirement
Sec. 8	Persons exempt from safety training
Sec. 9	Written safety testing requirement
Sec. 10	License approval, denial or revocation
Sec. 11	Features and use of firearm owner's licenses
Sec. 12	Appeal procedure
Sec. 13	Surrender and removal of firearms upon denial or revocation
Sec. 14	Duration and renewal
Sec. 15	Firearm license records
Sec. 16	Reporting requirements for license holders
Sec. 17	Administrative rules and regulations
Sec. 18	Penalties
Sec. 19	Severability

Sec. 1 Legislative findings, purpose and intent

[General findings regarding gun violence throughout the U.S. are provided in the Appendix of this publication. Findings regarding the need for and benefits of this model law are provided below. However, findings in support of a law are most effective when they are specific and localized. Whenever possible, data from the jurisdiction adopting the law, including data from law enforcement, the public health community and descriptions of particularly relevant incidents, should be added.]

The [Legislative Body]^{*} hereby finds and declares:

- (a) Between 1999 and 2007, over 6,500 people in the United States died from unintentional shootings, including 1,309 children and young people ages 0-18.¹ More than 15,000 persons in the United States are treated each year in hospital emergency rooms for unintentional gunshot wounds.²
- (b) At least 500,000 firearms are stolen each year from residences across the United States.³
- (c) Requiring gun owners to obtain a license after undergoing safety training and testing helps ensure that gun owners know how to safely use and store firearms, thereby reducing the

number of unintentional shootings, firearm thefts, and incidents in which unauthorized persons, such as children and criminals, gain access to firearms.

(d) Firearm licensing laws help increase compliance with existing firearms laws by requiring gun owners to demonstrate knowledge of those laws.

(e) Federal law does not require gun owners to obtain a license or undergo safety training or testing. Hawaii,⁴ Illinois,⁵ Massachusetts⁶ and New Jersey⁷ require licenses for all firearm purchasers or owners, while seven other states require a license only for handgun purchasers or owners.⁸ A number of local jurisdictions, including New York City⁹ and Chicago,¹⁰ have also enacted licensing requirements.

(f) A September 2010 report by Mayors Against Illegal Guns (a coalition of over 600 mayors that targets illegal guns nationwide) analyzed the impact of a variety of state laws on gun trafficking, concluding that guns flow from states with weak gun laws into states with stronger gun laws. With respect to licensing laws, the report concluded that states that require purchase permits for all handgun sales are the sources of guns recovered from crimes in other states at less than one-third the rate of states that do not have such laws.¹¹

(g) A 2001 study analyzing the firearm tracing data of crime guns recovered in 25 U.S. cities revealed that states with some form of both licensing and registration systems have greater success keeping firearms initially sold by dealers in the state from being recovered in crimes than states without such systems in place.¹² This suggests that licensing and registration laws make it more difficult for criminals, juveniles and other prohibited purchasers to obtain guns.¹³

(h) Public opinion polls show that Americans overwhelmingly support licensing laws. A nationwide poll conducted in May of 2001 found that 85% of respondents – including 73% of gun owners – favored laws requiring handgun purchasers to obtain a permit before buying a handgun. That poll also found that 70% of the respondents mistakenly believe that U.S. laws already require the licensing of gun owners.¹⁴

(i) It is the purpose and intent of the [Legislative Body] in enacting this Chapter to require firearm owners to obtain a license after undergoing safety training and testing and demonstrating knowledge of relevant firearm laws. The [Legislative Body] believes that this requirement will protect public safety and reduce gun deaths and injuries by helping to ensure that gun owners know how to safely store and use firearms, and will increase compliance with existing firearms laws by requiring gun owners to demonstrate knowledge of those laws.

Sec. 2 Definitions

As used in this Chapter:

[In addition to the terms defined below, the definitions of commonly used terms, such as “Ammunition,” “Department,” “Firearm,” “Law enforcement officer,” and “Person,” which are included in the Appendix, should be included in this section.]

- (a) “Applicant” or “firearm owner’s license applicant” refers to a person who is seeking a firearm owner’s license, or renewal of such a license, pursuant to this Chapter.
- (b) “License holder,” “holder,” or “licensee” refer to a person who has been issued a firearm owner’s license pursuant to this Chapter.

Sec. 3 Firearm owner’s license requirement

- (a) No person may purchase or possess a firearm within [Jurisdiction] unless he or she has been issued a firearm owner’s license.
- (b) Any person owning or possessing a firearm on the effective date of this Chapter shall apply for a license in accordance with this Chapter within [60] days of the effective date of this Chapter.
- (c) No person may deliver a firearm to any resident of [Jurisdiction] who does not present a valid firearm owner’s license.
- (d) A person delivering any firearm under this section must record the information for his or her files that is contained on the transferee’s firearm owner’s license.

Sec. 4 Ammunition purchase, possession, delivery

- (a) No person shall purchase, or possess ammunition for a firearm without having first obtained a firearm owner’s license.
- (b) No person shall deliver ammunition to any resident of [Jurisdiction] who does not present a valid firearm owner’s license.
 - (1) For any in-person transactions, the purchaser must physically present the license to the seller.
 - (2) For any transactions that are not in-person, the purchaser must provide his or her unique license number issued by the Department to the seller demonstrating that he or she is a valid licensee, before the seller transfers the ammunition.¹⁵
- (c) A person delivering any ammunition under this section must record the information for his or her files that is contained on the transferee’s firearm owner’s license.

Sec. 5 Exceptions

Sections 3 and 4 shall not apply to the purchase or possession of a firearm or ammunition by, or delivery of a firearm or ammunition to:

- (a) Any law enforcement or corrections agency, or law enforcement or corrections officer acting within the course and scope of his or her employment or official duties;

- (b) A United States Marshal or member of the Armed Forces of the United States or the National Guard, or a federal official, who is required to possess a firearm in the operation of his or her official duties;
- (c) Licensed firearms manufacturers, importers, or dealers, while engaged in the course and scope of their activities as licensees, provided that such persons are properly licensed under federal, state, and local law;
- (d) A gunsmith who is in possession of a firearm solely for the purposes of service or repair;
- (e) A common carrier, warehouseman, or other person engaged in the business of transporting or storing goods, to the extent that the possession or receipt of any firearm is in the ordinary course of business and not for the personal use of any such person;
- (f) A person who is under 18 years of age who is in possession of a firearm for lawful hunting or sporting purposes or for any other lawful recreational activity while under the direct supervision and control of the licensed owner of the firearm;
- (g) A person who is 18 years of age or older while the person is accompanying the licensed owner of the firearm and is using the firearm for lawful hunting or sporting purposes or for any other lawful recreational activity;
- (h) A new resident of [Jurisdiction] who has brought his or her firearm into the [Jurisdiction] within the preceding [60] days;
- (i) Nonresidents of [Jurisdiction] participating in lawful hunting or sporting activity or any other lawful recreational activity in [Jurisdiction], provided that their ownership or possession of a firearm for such purposes is lawful in the jurisdiction in which they reside, and that such weapon is transported in compliance with 18 U.S.C. § 926A;
- (j) A person being loaned a firearm solely for the purpose of shooting at targets, if the loan occurs on the premises of a properly licensed target facility, and the firearm is at all times kept within the premises of the target range;
- (k) A person who has acquired a firearm by operation of law upon the death of the former owner of the firearm within the preceding [60] days;
- (l) A person lawfully transporting a firearm through or into [Jurisdiction] in accordance with 18 U.S.C. § 926A; or
- (m) An adult family member of the licensee if the licensee resides with the family member but is not currently present in the residence, provided that the family member does not maintain control over the firearm for more than [14] consecutive days. This exception shall not apply if the licensee or the family member knows or has reasonable cause to believe that federal, state, or local law prohibits the family member from purchasing or possessing firearms, or the licensee

knows or has reasonable cause to believe that the family member is likely to use the firearm for unlawful purposes.

Sec. 6 Application for a license

- (a) Any person who is required to obtain a firearm owner's license under this Chapter shall:
- (1) Appear in person at a time and place designated by the Department;
 - (2) Complete and submit to the Department an application, in writing, signed under penalty of perjury, on a form prescribed by the Department;
 - (3) Provide all relevant information requested to demonstrate compliance with this Chapter, including:
 - a. The applicant's full name and any other name by which the applicant has ever been known;
 - b. The home address and telephone number of the applicant;
 - c. The occupation, business address and business telephone number of the applicant;
 - d. The applicant's gender, race, height, weight, date of birth, place of birth, country of citizenship, social security number, and, if the applicant is not a U.S. citizen, alien or admission number;
 - e. A copy of the applicant's current driver's license or other government-issued identification card containing a photograph of the applicant;
 - f. Information concerning any denial or revocation of a license, permit or registration card pertaining to any firearm owned or possessed by the applicant;
 - g. The name of, and description of any instance in which, any court, board, commission or other lawful authority has done either of the following, including dates of commitment and release:
 - i. Determined that the applicant, as a result of marked subnormal intelligence, mental illness, incompetency, condition, or disease, was a danger to himself or herself or others, lacked the mental capacity to contract or manage his or her own affairs, or was not guilty of a crime by reason of insanity or incompetent to stand trial; or
 - ii. Involuntarily committed the person to a mental institution (including the name and address of the institution);

- h. An affidavit signed by a certified firearms safety course instructor or authorized law enforcement officer stating that the applicant successfully completed a firearms safety training course and that the course fulfills the requirements of Sec. 7, and including the name, address, and telephone number of the instructor or officer, the name of the person taking the course, and the date(s) and place(s) of the course;
 - i. Proof that the applicant has successfully completed the written safety test described in Sec. 9;
 - j. Two identical color photographs of the applicant's face, frontal view, two inches square in size, taken within the 30 days immediately preceding the application, as specified in rules or regulations of the Department; and
 - k. Any additional information the Department deems necessary to process the application.
- (b) The Department may charge a fee to cover the administrative costs of the issuance of the license, as well as the administrative costs of issuing the written safety test under Sec. 9.¹⁶

Sec. 7 Safety training requirement

An applicant for a firearm owner's license must, as a condition for issuance of a license, complete a firearms safety training course that fulfills the following requirements:

- (a) The firearms safety training course must be approved by the Department, and:
 - (1) Conducted by a firearms instructor certified pursuant to rules and regulations prescribed by the Department; or
 - (2) Offered by a state, county or municipal law enforcement agency.
- (b) The firearms safety training course must require, at a minimum, [10] hours of instruction on:
 - (1) The safe use of firearms, including proper loading, unloading, and firing, and the proper engaging and disengaging of common firearm safety mechanisms;
 - (2) Methods for safely storing and securing firearms and ammunition and preventing child access to firearms and ammunition;
 - (3) Proper firearm care and cleaning;
 - (4) Applicable federal, state, and local laws relating to the purchase, sale, possession, transportation, carrying, and storage of firearms;

- (5) State laws pertaining to the use of deadly force for self-defense; and
 - (6) Techniques for managing a violent confrontation, including conflict resolution.
- (c) During the firearms safety training course, the applicant must satisfactorily demonstrate to the course instructor that he or she knows how to safely use and store firearms. This demonstration must include the proper loading and unloading of the firearm, the proper engaging and disengaging of common firearm safety mechanisms, and the proper firing of the firearm. If the firearm has a detachable magazine, the demonstration must also include the proper removal and reattachment of the magazine and acknowledgement by the applicant that a round may remain in the chamber even though the magazine has been removed.
- (d) A law enforcement agency or firearms instructor conducting a firearm safety training course intending to fulfill the requirements of this section shall:
- (1) Make the course records for each applicant available to law enforcement upon request;
 - (2) Maintain all course records on students for a period of no less than [six] years from course completion date; and
 - (3) Permit no more than [40] students in the classroom portion of the course, and no more than [five] students in the range instruction portion of the course.
- (e) A law enforcement agency or firearms instructor conducting a firearm safety training course shall not give a grade of passing to an applicant who:
- (1) Refuses to follow the instructions of the firearms instructor or agency representative; or
 - (2) Despite appropriate instruction, handles a firearm in a manner that, in the judgment of the firearms instructor or agency representative, poses a danger to the applicant or to others.
- (f) The firearm owner's license applicant must receive from the instructor(s) who conducted the course a signed affidavit providing the name, address, and telephone number of the instructor, the name of the person taking the course and the date(s) and place(s) of the course, and attesting to the successful completion of the course by the applicant. The applicant must present this affidavit to the Department as proof of completion of each program requirement.

Sec. 8 Persons exempt from safety training

- (a) Retired federal, state or local law enforcement officers or retired corrections officers who were required to own or possess a firearm while engaged in the operation of their official duties prior to retirement are exempt from Sec. 7.

(b) To obtain a firearm owner's license, an individual identified in section (a) must successfully complete the written test required in Sec. 9, and meet all other application requirements.

Sec. 9 Written safety testing requirement

Before a firearm owner's license will be issued, each applicant must successfully complete a written test, created and administered by the Department, demonstrating knowledge regarding the topics listed in Sec. 7(b).

Sec. 10 License approval, denial or revocation

(a) After consideration of an application for a license or for renewal of a license and all information obtained relative thereto, the Department shall either approve or deny the application and notify the applicant in writing of the decision, including the reason(s) for denial, and the appeal procedures under Sec. 12.

(b) The Department may grant or renew a firearm owner's license only if the applicant is in compliance with this Chapter and all other applicable federal, state and local laws relating to firearms and ammunition.

(c) The Department shall deny the issuance or renewal of a firearms owner's license, or shall revoke an existing license:

(1) For failure to meet any of the requirements of this Chapter, including the requirements for renewal pursuant to Sec. 14, or any other applicable federal, state, or local law relating to firearms or ammunition;

(2) For fraud or misrepresentation in securing a license;

(3) If the applicant is or becomes prohibited from purchasing or possessing a firearm under federal, state, or local law; or

(4) Upon the occurrence of any event or circumstance that would disqualify a licensee from being issued the original firearm owner's license.

Sec. 11 Features and use of firearm owner's licenses

(a) If the application for a firearm owner's license is approved, the Department shall issue to the licensee a firearm owner's license on a form prescribed by the Department containing the date of the issuance of the license, a unique license number, the licensee's name, residence address, date of birth, photograph, and such other personal information as may be required by the Department, and the date the license expires.

(b) The firearm owner's license shall not be transferable or assignable. The firearm owner's license shall be carried with the firearm if it is transported from the home by the holder. The holder shall exhibit the license to any law enforcement officer upon request.

Sec. 12 Appeal procedure

(a) If an application for a firearm owner's license or renewal of a license is denied or a license is revoked, the Department shall inform the applicant or license holder in writing of the reasons for the denial or revocation, and of the appeal procedures under this section. Any applicant who believes that his or her application was wrongfully denied, or any holder of a license who believes that his or her license was wrongfully revoked may, within [30] days after receiving notice of the denial or revocation, file an appeal of the denial or revocation with the Department. The appeal must be made in writing, setting forth the specific grounds for the appeal.

(b) If the applicant or license holder submits a timely appeal, the [Head of the Department] shall set a time and place for the hearing and, based upon the evidence contained in the record of such hearing, either affirm or reverse the decision of the Department. The [Head of the Department] shall provide a written decision regarding the appeal. The action of the [Head of the Department] shall be subject to judicial review in accordance with the provisions of the [jurisdiction's law regarding judicial review].

(c) In the event that the decision to deny the application or revoke the license is affirmed, the decision to deny the application or revoke the license shall become final only after all time for judicial review of the decision of the [Head of the Department] has expired.

Sec. 13 Surrender and removal of firearms upon denial or revocation

(a) When a decision not to renew a license or to revoke a firearm owner's license becomes final, the license holder must immediately surrender to the Department any firearms that he or she owns or possesses.

(b) If an applicant or license holder fails to surrender his or her firearms to the Department after he or she receives notice that the decision to revoke his or her license or deny his or her application for renewal has become final, the Department shall retrieve the firearms, if any, within [48] hours.

Sec. 14 Duration and renewal

(a) A firearm owner's license shall expire automatically [three] years from the date of issuance. Except as stated in subsection (b), the license holder shall renew his or her license once every [three] years through completion of the requirements in Sec. 6 and successful completion of the written test required by Sec. 9.

(b) A license holder must repeat the safety training requirement in Sec. 7 once every [six] years.

(c) The Department shall mail renewal notices to each license holder at least [90] days prior to expiration of the license. The renewal notice shall state whether the person must complete the safety training requirement pursuant to subsection (b) for renewal of the license. Applications for renewal shall be received by the Department [60] days prior to the expiration of the current license.

(d) The Department shall follow the procedures of Sec. 10 in approving or denying the application for renewal of a license.

Sec. 15 Firearm license records

The Department shall retain an accurate record of every application for a firearm owner's license, received and acted upon, together with all other information pertaining thereto on all applications issued or denied under the provisions of this Chapter. Such information shall be maintained in an accessible manner and available to law enforcement and the public upon request.¹⁷

Sec. 16 Reporting requirements for license holders

A license holder shall report to the Department:

- (a) Within [48] hours of the time he or she discovered or should have discovered:
 - (1) The loss or theft of any firearm he or she owns or possesses;¹⁸ or
 - (2) Any change in his or her status that would affect his or her eligibility to own or possess a firearm or firearm owner's license; and
- (b) Within [14] days of the occurrence of:
 - (1) Any change in the information appearing on the license that would not affect his or her eligibility for the license; or
 - (2) The time he or she knew or should have known of the loss, theft or destruction of the license.

For suggested language regarding Sections 17 – 19, Administrative rules and regulations, Penalties, and Severability, see the Appendix.

* Where the words “[Act/Ordinance],” “[Jurisdiction],” “[Legislative Body]” or similar variations appear, simply select the appropriate designation for your jurisdiction.

¹ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Web-Based Injury Statistics Query & Reporting System (WISQARS), *WISQARS Injury Mortality Reports, 1999-2007* (2010), http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html.

² U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, Web-Based Injury Statistics Query & Reporting System (WISQARS), *WISQARS Nonfatal Injury Reports* (2010), <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>. See also Karen E. Gotsch

et al., *Surveillance for Fatal and Nonfatal Firearm-Related Injuries – United States 1993-1998*, CDC Surveillance Summary, Apr. 13, 2001, at 2, available at <http://www.cdc.gov/mmwr/pdf/ss/ss5002.pdf>.

³ Bureau of Alcohol, Tobacco & Firearms, U.S. Dep’t of Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* 41 (2000), available at

http://www.mayorsagainstillegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf.

⁴ Haw. Rev. Stat. §§ 134-2, 134-13.

⁵ 430 Ill. Comp. Stat. 65/1 – 65/15a.

⁶ Mass. Gen. Laws ch. 140, §§ 121, 129B, 129C, 131, 131A, 131E, 131P.

⁷ N.J. Stat. § 2C:58-3.

⁸ Cal. Penal Code §§ 12071(b)(8), 12800 – 12808; Conn. Gen. Stat. §§ 29-33, 29-36f – 29-36i; Iowa Code §§ 724.15 – 724.20; Mich. Comp. Laws §§ 28.422, 28.422a; N.Y. Penal Law §§ 400.00 – 400.01; N.C. Gen. Stat. §§ 14-402 – 14-404; R.I. Gen. Laws §§ 11-47-35 – 11-47-35.1.

⁹ City of New York Administrative Code §§ 10-303 *et seq.*, 10-131(a), (i); Rules of the City of New York Title 38, §§ 3-09, 5-01, 5-22, 5-25.

¹⁰ Municipal Code of Chicago §§ 8-20-110 – 8-20-130.

¹¹ Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking* 17 (2010), available at <http://www.tracetheguns.org/report.pdf>. According to this report, states that require handgun purchase permits often require that a prospective gun buyer visit a law enforcement agency to obtain the permit – which may deter criminals and traffickers from applying. The report also suggests that the enhanced background checks these laws may impose on license applicants make it more difficult for gun traffickers to obtain firearms. *Id.*

¹² Daniel W. Webster et al., *Relationship Between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns*, 7 Inj. Prevention 184, 188-89 (2001). The study included jurisdictions with concealed carry permits and dealer sales reporting, which have elements of licensing or registration but are not comprehensive licensing or registration systems.

¹³ Licensing laws are most effective when combined with laws requiring the registration of firearms. Please see the *LCAV Model Law Requiring the Registration of Firearms* for further information about such laws.

¹⁴ Educational Fund to Stop Gun Violence, *Lake, Snell, Perry & Associates, Inc. Poll, (May 15-21, 2001)*, <http://www.commondreams.org/news2001/0612-05.htm>. A poll conducted in 2008 found that 68% of voters, including 60% of gun owners, support the licensing of gun owners. Penn, Schoen, & Berland Associates, Inc. for Brady Campaign to Prevent Gun Violence, *Post-Election Analysis: Sensible Gun Laws Builds Bridges not Burns [sic] Them to Moderates, McCain, and Even Gun Owners in Post-Heller World* (Nov. 18, 2008), available at <http://www.bradycampaign.org/xshare/pdf/memo-11-18-08.pdf>.

¹⁵ This provision is designed to cover mail-order and internet sales of ammunition.

¹⁶ LCAV recommends that a jurisdiction require all gun transfers to be conducted through a licensed dealer (see the *Model Law Requiring Background Checks on All Gun Purchasers*). A jurisdiction that chooses not to adopt a background check requirement might, at its option, consider requiring the applicant or license holder to undergo a background check prior to issuance or renewal of a license to ensure that person is not prohibited from purchasing or possessing a firearm under federal, state or local law.

¹⁷ Note that such records should be maintained at the state level. If “Department” is defined in Sec. 2 as a local agency or official, the Department should retain original copies of these records, but should also be required to forward copies of these records to a state agency or official required to maintain a statewide database containing this information and to make all the information in that database available to law enforcement and the public.

¹⁸ More comprehensive language requiring all firearm owners and persons in possession of a firearm to report the loss or theft of the firearm to law enforcement is presented in the *Model Law Requiring the Reporting of Lost or Stolen Firearms*.

C. Model Law Requiring the Registration of Firearms

This model law requires any person who owns or possesses a firearm to register the firearm, *i.e.*, to record his or her ownership or possession of the firearm with a designated governmental agency, and to renew the registration annually after undergoing a background check. As discussed in the findings below, registration laws are an essential component of responsible gun policy because they: 1) help law enforcement to quickly trace firearms recovered at crime scenes; 2) discourage illegal firearm sales by creating accountability for gun owners; 3) protect police officers responding to an incident by providing them with information about whether firearms may be present at the scene; and 4) facilitate the return of lost or stolen firearms to their rightful owners. In addition, registration laws that require periodic renewal help ensure that gun owners who have fallen into a prohibited category (*e.g.*, by being convicted of a felony) aren't allowed to continue to possess or own firearms.

Federal law does not require firearm registration. Hawaii is currently the only state that requires the registration of all firearms. Six other states and several local governments require registration of some, but not all, firearms.

The American public strongly supports laws requiring gun registration. A nationwide poll conducted in January 2011, for example, found that 66% of respondents favor laws requiring every gun owner to register each gun he or she owns as part of a national gun registry. A 2008 poll found that 68% of voters, including 60% of gun owners, support the registration of guns. In fact, polling shows most Americans mistakenly believe that U.S. laws already require gun registration.

Text of Model Law

CHAPTER 1 REQUIRING THE REGISTRATION OF FIREARMS

- Sec. 1 Legislative findings, purpose and intent**
- Sec. 2 Definitions**
- Sec. 3 Firearm registration requirement**
- Sec. 4 Ammunition purchase, possession, delivery**
- Sec. 5 Exceptions**
- Sec. 6 Application to register a firearm**
- Sec. 7 Investigation by Department**
- Sec. 8 Registration approval, denial or revocation**
- Sec. 9 Features and use of firearm registration cards**
- Sec. 10 Appeal procedure**
- Sec. 11 Surrender and removal of firearms upon denial of
application to register or renew or revocation of
registration card**
- Sec. 12 Duration and renewal**
- Sec. 13 Firearm registration records**
- Sec. 14 Reporting requirements for registrants**
- Sec. 15 Administrative rules and regulations**
- Sec. 16 Penalties**
- Sec. 17 Severability**

Sec. 1 Legislative findings, purpose and intent

[General findings regarding gun violence throughout the U.S. are provided in the Appendix of this publication. Findings regarding the need for and benefits of this model law are provided below. However, findings in support of a law are most effective when they are specific and localized. Whenever possible, data from the jurisdiction adopting the law, including data from law enforcement, the public health community, and descriptions of particularly relevant incidents, should be added.]

The [Legislative Body]^{*} hereby finds and declares:

- (a) Firearm registration laws, which require individuals to record their ownership or possession of a firearm with a designated law enforcement agency, help law enforcement quickly and reliably “trace” (identify the source of) firearms recovered from crime scenes, and retrieve firearms from persons who have become legally prohibited from possessing them through criminal convictions or other prohibitions.
- (b) Laws requiring the registration of firearms discourage illegal firearm sales by creating accountability for gun owners, and help law enforcement return lost or stolen firearms to their rightful owners.

- (c) Information generated by firearm registration systems helps protect law enforcement officers responding to an incident by providing them with information about whether firearms may be present at the scene and, if so, how many and what types.
- (d) Registration laws that require periodic renewal of the registration with an updated background check help ensure that gun owners and possessors who have fallen into a prohibited category (e.g., by being convicted of a felony) are not allowed to continue to possess or own firearms.
- (e) States with some form of both registration and licensing systems have greater success keeping firearms from being recovered in crimes than states without such systems in place.¹
- (f) Federal law does not require firearm registration. In fact, federal law specifically prohibits the use of the National Instant Criminal Background Check System to create any national system of registration of firearms or firearm owners.²
- (g) Hawaii is currently the only state that requires the registration of all firearms.³ Five other states require registration of some, but not all firearms.⁴ Local jurisdictions that currently require the registration of some or all firearms include Washington, D.C.;⁵ Chicago, Illinois;⁶ New York, New York;⁷ and Omaha, Nebraska.⁸
- (h) The American public strongly supports laws requiring gun registration. A nationwide survey conducted in January 2011, for example, found that 66% of respondents favor laws requiring every gun owner to register each gun he or she owns as part of a national gun registry.⁹ A 2008 poll found that 68% of voters, including 60% of gun owners, support the registration of guns.¹⁰ A poll conducted in May 2001 found that 70% of respondents mistakenly believe that a registration system already exists in the United States.¹¹
- (i) It is the purpose and intent of the [Legislative Body] in enacting this Chapter to enact a comprehensive system of firearm registration in [Jurisdiction]. The [Legislative Body] believes that a comprehensive system of firearm registration will, as outlined in these findings, increase public safety and help to reduce gun deaths and injuries by discouraging illegal gun sales and helping law enforcement solve gun crimes.

Sec. 2 Definitions

As used in this Chapter:

[In addition to the terms defined below, the definitions of commonly used terms, such as “Ammunition,” “Department,” “Firearm,” “Law enforcement officer,” and “Person,” which are included in the Appendix, should be included in this section.]

- (a) “Applicant” means a person who is seeking the issuance or renewal of a registration card for a firearm that he or she owns, or possesses.

(b) “Registrant” means a person who has been issued a registration card for a firearm that he or she owns, or possess.

(c) “Seller” means any person selling or otherwise transferring a firearm, including a licensed firearms dealer or unlicensed gun seller.

Sec. 3 Firearm registration requirement

(a) Every person in [Jurisdiction] must register each firearm he or she owns or possesses in accordance with this Chapter.

(b) Any person owning or possessing a firearm on the effective date of this Chapter shall apply to register the firearm in accordance with this Chapter within [60] days of the effective date thereof.

(c) No person¹² shall deliver a firearm, and no person shall receive or obtain a firearm, until all of the following have occurred:

(1) The buyer or transferee has completed an application to register the firearm in accordance with Sec. 6;

(2) The seller has verified that the prospective registrant is the person whose driver’s license or other government-issued identification card is contained in the application;

(3) The seller has transmitted the completed application to register the firearm to the Department in a manner prescribed by the Department; and

(4) The seller has provided a receipt for the application to the prospective registrant on a form to be prescribed by the Department.

(d) A person shall be deemed to have complied with Section 3(a) for a firearm if he or she produces a valid receipt indicating that he or she has applied to register that firearm in accordance with this Chapter and the application is pending.

Sec. 4 Ammunition purchase, possession, delivery

(a) No person shall purchase or possess ammunition without having first obtained a registration card identifying a firearm suitable for use with that ammunition.

(b) No person shall deliver ammunition without having first verified that the ammunition purchaser possesses a registration card for a firearm that is suitable for use with that ammunition, or a receipt demonstrating that the person has applied to register a suitable firearm in accordance with this Chapter and the application is pending.¹³

Sec. 5 Exceptions

Sections 3 and 4 shall not apply to the ownership, possession, or receipt of a firearm or ammunition by, or delivery of a firearm or ammunition to:

- (a) Any law enforcement or corrections agency, or law enforcement or corrections officer acting within the course and scope of his or her employment or official duties;
- (b) A United States Marshal or member of the Armed Forces of the United States or the National Guard, or a federal official, who is required to possess a firearm in the operation of his or her official duties;
- (c) Licensed firearms manufacturers, importers, or dealers, while engaged in the course and scope of their activities as licensees, provided that such persons are properly licensed under federal, state, and local law;
- (d) A gunsmith who is in possession of a firearm solely for the purposes of service or repair;
- (e) A common carrier, warehouseman, or other person engaged in the business of transporting or storing goods, to the extent that the possession or receipt of any firearm is in the ordinary course of business and not for the personal use of any such person;
- (f) A person who is under 18 years of age who is in possession of a firearm for lawful hunting or sporting purposes or for any other lawful recreational activity while under the direct supervision and control of the registrant;
- (g) A person who is 18 years of age or older who is in possession of a registered firearm while accompanying the registrant and using the firearm for lawful hunting or sporting purposes or for any other lawful recreational activity;
- (h) A new resident of [Jurisdiction] who has brought his or her firearm into the [Jurisdiction] within the preceding [60] days, or who produces a valid receipt indicating that he or she has applied to register the firearm within this time period and the application is pending;
- (i) Nonresidents of [Jurisdiction] participating in lawful hunting or sporting activity or other lawful recreational activity in [Jurisdiction], provided that their ownership or possession of a firearm for such purposes is lawful in the jurisdiction in which they reside, and that such weapon is transported in compliance with 18 U.S.C. § 926A;
- (j) A person being loaned a firearm solely for the purpose of shooting at targets, if the loan occurs on the premises of a properly licensed target facility, and the firearm is at all times kept within the premises of the target range;
- (k) A person who has acquired a firearm by operation of law upon the death of the former owner of the firearm within the preceding [60] days, or who produces a valid receipt indicating

that he or she has applied to register the firearm within this time period and the application is pending;

(l) A person lawfully transporting a firearm through [Jurisdiction] in accordance with 18 U.S.C. § 926A; or

(m) An adult family member of the registrant of the firearm if the registrant resides with the family member but is not currently present in the residence, provided that the family member does not maintain control over the firearm for more than [14] consecutive days. This exception shall not apply if the registrant or the family member knows or has reasonable cause to believe that federal, state, or local law prohibits the family member from purchasing or possessing firearms, or the registrant knows or has reasonable cause to believe that the family member is likely to use the firearm for unlawful purposes.

Sec. 6 Application to register a firearm

(a) Any person who is required to register a firearm under this Chapter shall:

(1) For a newly purchased firearm:

- a. Obtain a registration application from the seller of the firearm to be registered; and
- b. Complete and submit to the firearm seller the application, in writing, signed under penalty of perjury, on a form prescribed by the Department.

(2) For a firearm that was lawfully owned or possessed on the effective date of this Chapter, was brought into [Jurisdiction] by a new resident, or was acquired by operation of law upon the death of the former owner:

- a. Appear in person at a time and place designated by the Department; and
- b. Complete and submit to the Department the application, in writing, signed under penalty of perjury, on a form prescribed by the Department.

(b) Any person who is required to register a firearm must provide the following information on a registration application created by the Department, which form shall include:

- (1) The applicant's full name and any other name by which the applicant has ever been known;
- (2) The home address and telephone number of the applicant;
- (3) The occupation, business address and telephone number of the applicant;

- (4) The applicant's gender, race, height, weight, date of birth, place of birth, country of citizenship, social security number, and, if the applicant is not a U.S. citizen, alien or admission number;
- (5) A copy of the applicant's current driver's license or other government-issued identification card containing a photograph of the applicant;
- (6) Information concerning any denial or revocation of a license, permit or registration card pertaining to any firearm owned or possessed by the applicant;
- (7) The make, model, manufacturer's name, caliber or gauge, and serial number, and any other distinguishing numbers of all firearms for which the applicant seeks to obtain a registration card;
- (8) The date the applicant acquired each firearm;
- (9) The name, address, and telephone number of the person from whom each firearm was obtained, and in the case of a firearms dealer, the dealer's license number;
- (10) The name of, and description of any instance in which, any court, board, commission or other lawful authority has done either of the following, including dates of commitment and release:
 - a. Determined that the applicant, as a result of marked subnormal intelligence, mental illness, incompetency, condition, or disease, was a danger to himself or herself or others, lacked the mental capacity to contract or manage his or her own affairs, or was not guilty of a crime by reason of insanity or incompetent to stand trial; or
 - b. Involuntarily committed the person to a mental institution (including the name and address of the institution);
- (11) An authorization and release to obtain information relevant to the person's eligibility to register a firearm pursuant to this Chapter, from any source, that waives any right to confidentiality and requests the disclosure of such information to the Department for the sole purpose of determining the person's eligibility to register a firearm pursuant to this Chapter;
- (12) The applicant's right thumbprint;
- (13) Two identical color photographs of the applicant's face, frontal view, two inches square in size, taken within the 30 days immediately preceding the application, as specified in rules or regulations of the Department; and
- (14) Any additional information the Department deems necessary to process the application.

- (c) The Department may charge a fee to cover the administrative costs of the registration for each firearm.

Sec. 7 Investigation by Department

- (a) The Department must complete a background check of any person who applies for:
- (1) A registration card for a firearm that was lawfully owned or possessed on the effective date of this Chapter, was brought into [Jurisdiction] by a new resident, or was acquired by operation of law upon the death of the former owner; or
 - (2) A renewal of a registration card unless, within [12] months of the date the renewal application is submitted, the applicant passed a background check conducted by the Department in connection with the applicant's acquisition of another firearm.
- (b) The background check required by subsection (a) shall include a search of:
- (1) The National Instant Criminal Background Check System of the Federal Bureau of Investigation;
 - (2) State and local criminal history record information files;
 - (3) Federal, state, and local records regarding wanted persons;
 - (4) Federal, state, and local records of domestic violence restraining and protective orders;
 - (5) Federal, state, and local records identifying persons who are unlawful users of or addicted to any controlled substance (as defined in section 802 of Title 21 of the United States Code);
 - (6) The files of [the jurisdiction's agency that maintains information relating to mental health and developmental disabilities]; and
 - (7) Any other available files of any federal, state, and local agency and other entity (private or public) in any jurisdiction likely to contain information relevant to whether the applicant is prohibited from purchasing or possessing a firearm under federal, state, or local law.
- (c) No registration card shall be issued or renewed if the applicant is prohibited from purchasing or possessing a firearm under federal, state, or local law.

Sec. 8 Registration approval, denial or revocation

- (a) After consideration of an application for a registration card or for renewal of a registration card and all information obtained relative thereto, the Department shall either

approve or deny the application and notify the applicant in writing of the decision, including the reason(s) for denial, and the appeal procedures under Sec. 10.

(b) The Department may grant or renew a registration card only if the applicant is in compliance with this Chapter and all other applicable federal, state and local laws relating to firearms and ammunition.

(c) The Department shall deny the issuance or renewal of a registration card, or shall revoke an existing registration card:

(1) For failure to meet any of the requirements of this Chapter, including the requirements for renewal pursuant to Sec. 12, or any other applicable federal, state, or local law relating to firearms or ammunition;

(2) For fraud or misrepresentation in securing a registration card;

(3) If the applicant is or becomes prohibited from purchasing or possessing a firearm under federal, state, or local law; or

(4) Upon the occurrence of any event or circumstance that would disqualify the registrant from being issued the original registration card.

Sec. 9 Features and use of firearm registration cards

(a) If the application to register a firearm is approved, the Department shall issue to the registrant a registration card on a form prescribed by the Department for each firearm listed on the application. Each registration card must contain the date of the registration, a unique registration number, the registrant's name, residence address, date of birth, photograph, the make, model, manufacturer's name, caliber or gauge and serial number of the firearm, the date the registration card expires, and such other personal information as may be required by the Department.

(b) The registration card shall not be transferable or assignable. The registration card shall be stored with the corresponding firearm in the registrant's home, and shall be carried with the firearm if it is transported outside of the home. The registrant shall exhibit the registration card to any law enforcement officer upon request.

Sec. 10 Appeal procedure

(a) If an application to register a firearm or to renew a registration card is denied, or if a registration card is revoked, the Department shall inform the applicant or registrant in writing of the reasons for the denial or revocation, and of the appeal procedures under this section. Any applicant who believes that his or her application was wrongfully denied, or registrant who believes his or her registration was wrongfully revoked, may, within [30] days after receiving notice of the denial or revocation, file an appeal of the denial or revocation with the Department. The appeal must be made in writing, setting forth the specific grounds for the appeal.

(b) If the applicant or registrant submits a timely appeal, the [Head of the Department] shall set a time and place for the hearing and, based upon the evidence contained in the record of such hearing, either affirm or reverse the decision of the Department. The [Head of the Department] shall provide a written decision regarding the appeal. The action of the [Head of the Department] shall be subject to judicial review in accordance with the provisions of the [jurisdiction's laws regarding judicial review].

(c) In the event that the decision to deny the application or revoke the registration card is affirmed, the decision to deny the application or revoke the registration shall become final only after the time for judicial review of the decision of the [Head of the Department] has expired.

Sec. 11 Surrender and removal of firearms upon denial of application to register or renew or revocation of registration card

(a) When a decision to deny an application to register, to renew a registration card, or to revoke a registration card becomes final, the applicant or registrant must immediately surrender to the Department the firearm for which the applicant was denied registration or renewal or for which the registration card was revoked.

(b) If an applicant or registrant fails to surrender his or her firearm to the Department after he or she receives notice that the decision to deny an application to register, to renew or to revoke a registration card becomes final, the Department shall retrieve the firearm within [48] hours.

Sec. 12 Duration and renewal

(a) Registration cards shall expire automatically one year after the date of issuance. To apply for renewal of a registration card, the card holder shall complete an application for registration as described in Sec. 6.

(b) The Department shall mail renewal notices to each registrant at least [90] days prior to expiration of the registration card. Applications for renewal shall be received by the Department [60] days prior to the expiration of the current registration card.

(c) The renewal process for all registrants shall include a background check, as provided in Sec. 7.

(d) The Department shall follow the procedures of Sec. 8 in approving or denying the application for renewal.

Sec. 13 Firearm registration records

The Department shall retain an accurate record of each application for a registration card, received and acted upon, together with all other information pertaining thereto on all applications issued or denied under the provisions of this Chapter. Such information shall be maintained in an accessible manner and available to law enforcement and the public upon request.¹⁴

Sec. 14 Reporting requirements for registrants

A registrant shall report to the Department:

- (a) Within [48] hours of the time he or she discovered or should have discovered:
 - (1) The loss or theft of any firearm he or she owns or possesses;¹⁵ or
 - (2) Any change in his or her status that would affect his or her eligibility to own or possess a firearm or registration card; and
- (b) Within [14] days of the occurrence of:
 - (1) Any change in the information appearing on the registration card that would not affect his or her eligibility for the registration card; or
 - (2) The time he or she knew or should have known of the loss, theft or destruction of a registration card.

For suggested language regarding Sections 15 – 17, Administrative rules and regulations, Penalties, and Severability, see the Appendix.

* Where the words “[Act/Ordinance],” “[Jurisdiction],” “[Legislative Body]” or similar variations appear, simply select the appropriate designation for your jurisdiction.

¹ Daniel W. Webster et al., *Relationship Between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns*, 7 Inj. Prevention 184, 188-89 (2001). The study analyzed the firearm tracing data of crime guns recovered in 25 U.S. cities and revealed that states with some form of both registration and licensing systems have greater success keeping firearms initially sold by dealers in the state from being recovered in crimes than states without such systems in place. The study included jurisdictions with concealed carry permits and dealer sales reporting, which have elements of licensing or registration but are not comprehensive licensing or registration systems.

² 28 C.F.R. § 25.9(b)(3). Federal law requires only machine guns, machine gun attachments, short-barreled rifles, short-barreled shotguns, destructive devices and other unique, specified firearms to be registered. 26 U.S.C. §§ 5841, 5845.

³ Haw. Rev. Stat. § 134-3.

⁴ Cal. Penal Code §§ 12276, 12276.1, 12276.5, 12280, 12285(a) (assault weapons and 50 caliber rifles); Conn. Gen. Stat. Ann. § 53-202d(a) (assault weapons); Md. Code Ann., Crim. Law § 4-303 (assault weapons); N.J. Stat. Ann. §§ 2C:39-5f, 2C:58-12 (assault weapons); La. Rev. Stat. Ann. §§ 40:1781, 40:1783 (short-barreled rifles and shotguns and machine guns).

⁵ D.C. Code §§ 7-2052.01 – 7-2502.06.

⁶ Chicago, Ill., Code §§ 8-20-140 – 8-20-210.

⁷ New York, N.Y., Admin. Code §§ 10-303, 10-304, 10-305(m).

⁸ Omaha, Neb., Code §§ 20-251, 20-253 – 254.

⁹ [American](http://www.mayorsagainstillegalguns.org/downloads/pdf/maig_poll_01_18_2011.pdf) Viewpoint and Momentum Analysis for Mayors Against Illegal Guns, *Results From A National Survey of 1003 Registered Voters* (January 2011), at http://www.mayorsagainstillegalguns.org/downloads/pdf/maig_poll_01_18_2011.pdf.

¹⁰ Penn, Schoen, & Berland Associates, Inc. for Brady Campaign to Prevent Gun Violence, *Post-Election Analysis: Sensible Gun Laws Builds Bridges not Burns* [sic] *Them to Moderates, McCain, and Even Gun Owners in Post-Heller World* (Nov. 18, 2008), available at: <http://www.bradycampaign.org/xshare/pdf/memo-11-18-08.pdf>.

¹¹ Lake, Snell, Perry & Associates, Inc. Poll, *Educational Fund to Stop Gun Violence* (May 15-21, 2001), at <http://www.commondreams.org/news2001/0612-05.htm>.

¹² LCAV recommends that jurisdictions require all firearm sales to be conducted through licensed dealers. If a jurisdiction chooses not to adopt such a requirement, the jurisdiction should, as part of its registration provision, require that a person obtaining a gun in a private sale submit to a background check prior to receiving a registration card under the provisions of Sec. 6(a)(1).

¹³ A note regarding additional sections: A jurisdiction may seek to bolster its public safety laws by adopting additional provisions relevant to registration, including: 1) limiting the number of firearms that may be registered to a person; 2) limiting the locations where firearms may be carried or possessed; or 3) requiring the Department to provide firearm owners with information about the rights and responsibilities associated with owning a firearm, including information about the safe storage of firearms and ammunition and relevant firearms laws.

¹⁴ LCAV recommends that such records be maintained at the state level. If “Department” is defined in Sec. 2 as a local agency or official, the Department should maintain its original copies of these records, but should also be required to forward copies of these records to a state agency or official required to maintain a statewide database containing this information and to make all the information in that database available to law enforcement and the public.

¹⁵ Comprehensive language requiring all firearm owners and persons in possession of a firearm to report the loss or theft of the firearm to law enforcement is presented in LCAV’s *Model Law Requiring the Reporting of Lost or Stolen Firearms*.

D. Model Law Regulating Firearms Dealers and Ammunition Sellers

This model law regulates firearms dealers and ammunition sellers. Among other things, the law requires anyone engaged in the business of selling firearms or ammunition to obtain a law enforcement permit, be located in a commercial area, perform background checks on employees, secure inventory to prevent thefts, obtain liability insurance, and maintain sales and acquisition logs. These and the other requirements in the model law will help law enforcement agencies enforce existing firearms and ammunition laws and encourage firearms dealers and ammunition sellers to operate responsibly.

As discussed in the findings below, federal regulation of firearms dealers and ammunition sellers is currently inadequate to protect public safety, and gun dealers are a major source of trafficked firearms. Although federal law requires firearms dealers to obtain a license from the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF), ATF does not have the resources or authority to properly oversee the more than 60,000 firearms dealers, manufacturers, collectors, and others that it licenses. As a result, ATF inspects each licensee, on average, only once every 17 years.

Many state and local jurisdictions across the country have adopted laws regulating firearms dealers. The International Association of Chiefs of Police recommends that state and local governments enact their own dealer licensing requirements because they can respond to specific community concerns, and because state and local oversight of licensees helps reduce the number of corrupt dealers. In addition, a 2009 study found that cities in states that comprehensively regulate retail firearms dealers and cities where such businesses undergo regular compliance inspections have significantly lower levels of gun trafficking than other cities.

The American public overwhelmingly supports laws regulating firearms dealers. A nationwide poll conducted in March and April, 2008, found that:

- 91% of Americans favor requiring gun stores to perform background checks on employees;
- 86% of Americans favor requiring gun retailers to inspect their inventories every year to report stolen or missing guns;
- 88% of Americans favor requiring gun stores to keep all guns locked securely to prevent theft; and
- 74% of Americans favor requiring gun retailers to videotape all gun sales.

Text of Model Law

CHAPTER 1 REGULATING FIREARMS DEALERS AND AMMUNITION SELLERS

- Sec. 1 Legislative findings, purpose and intent**
- Sec. 2 Definitions**
- Sec. 3 Law enforcement permit**
- Sec. 4 Application for permit**
- Sec. 5 Investigation by Department and employee background checks**
- Sec. 6 Grounds for permit denial**
- Sec. 7 Issuance of law enforcement permit; duration**
- Sec. 8 Revocation of law enforcement permit**
- Sec. 9 Appeal procedure for denial of application for permit or renewal of permit or revocation**
- Sec. 10 Report of permit revocation to federal [and state] authorities**
- Sec. 11 Display of law enforcement permit**
- Sec. 12 Nonassignability**
- Sec. 13 Compliance by existing businesses**
- Sec. 14 Law enforcement inspections**
- Sec. 15 On-site security**
- Sec. 16 Liability insurance**
- Sec. 17 Location of business premises**
- Sec. 18 Warnings to consumers**
- Sec. 19 Duties upon sale, lease, or transfer**
- Sec. 20 Sales records and reporting**
- Sec. 21 Firearm acquisitions records and reporting**
- Sec. 22 Inventory reports**
- Sec. 23 Lost or stolen firearms reporting**
- Sec. 24 Restricted admittance of minors and other prohibited purchasers**
- Sec. 25 Civil liability**
- Sec. 26 Administrative rules and regulations**
- Sec. 27 Penalties**
- Sec. 28 Severability**

Sec. 1 Legislative findings, purpose and intent

[General findings regarding gun violence throughout the U.S. are provided in the Appendix of this publication. Findings regarding the need for and benefits of this model law are provided below. However, findings in support of a law are most effective when they are specific and localized. Whenever possible, data from the jurisdiction adopting the law, including data from law enforcement, the public health community and descriptions of particularly relevant incidents, should be added.]

The [Legislative Body]* hereby finds and declares:

(a) Federal regulation of firearms dealers and ammunition sellers is currently inadequate to protect public safety. Although federal law requires firearms dealers to obtain a license from the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF),¹ ATF does not have the resources or authority to properly oversee the more than 60,000 firearms dealers, manufacturers, collectors and others that it licenses.² ATF reported in 2007 that it inspects each licensee, on average, only once every 17 years.³ Between 1975 and 2005, ATF revoked, on average, fewer than 20 federal firearms licenses per year.⁴ The Office of the Inspector General has concluded that inspections by ATF are not fully effective for ensuring that licensees comply with federal firearms laws.⁵

(b) Federally-licensed firearm dealers (FFLs)⁶ are a major source of trafficked firearms. In June of 2000, ATF issued a comprehensive report of firearms trafficking in this country. That report analyzed 1,530 trafficking investigations during the period July 1996 through December 1998, involving more than 84,000 diverted firearms.⁷ ATF found that FFLs were associated with the largest number of trafficked guns – over 40,000 – and concluded that “FFLs’ access to large numbers of firearms makes them a particular threat to public safety when they fail to comply with the law.”⁸ In 1998, ATF found that 56% of randomly inspected dealers and 30% of pawnbrokers selling 50 or more guns had violated federal firearms law.⁹ In addition, during fiscal year 2007, ATF found over 30,000 firearms missing from licensees’ inventories with no record of sale.¹⁰

(c) According to a 1998 ATF random sample of FFLs nationwide, 56% of all firearms dealers operated out of their homes, and 33% were located in businesses that are not usually associated with gun sales, such as funeral homes or auto parts stores.¹¹

(d) ATF faces numerous obstacles that limit its ability to enforce the law; for example, ATF may conduct only one unannounced inspection of each FFL per year, the burden of proof for ATF’s prosecution and revocation of licenses is extremely high, serious violations of federal firearms law are classified as misdemeanors rather than felonies, and ATF has historically been grossly understaffed.¹²

(e) Federal law is silent regarding many important aspects of firearms dealers’ and ammunition sellers’ businesses. Among other things, federal law does not require these businesses to:

- (1) Implement security requirements (*e.g.*, install burglar alarms or surveillance cameras);
- (2) Conduct employee background checks;
- (3) Maintain adequate business liability insurance; or
- (4) Refrain from operating in residential neighborhoods or near schools, daycare centers or parks.¹³

(f) No federal law requires ammunition sellers to create or maintain records of ammunition sales, or requires persons who sell, loan or transfer ammunition to obtain a license.¹⁴ A number of state and local jurisdictions have adopted such laws, however.¹⁵

(g) Federal law contemplates state and local regulation of firearms dealers by requiring dealers to comply with all state and local dealer laws as a condition for obtaining their federal licenses.¹⁶ Currently, 17 states, the District of Columbia¹⁷ and numerous local jurisdictions¹⁸ require firearms dealers to obtain a license or permit. Few of these laws are comprehensive, however.

(h) The International Association of Chiefs of Police recommends that state and local governments impose their own licensing requirements on firearms dealers because they can respond to specific community concerns, and because state and local oversight of licensees helps reduce the number of corrupt dealers.¹⁹

(i) A September 2010 report by Mayors Against Illegal Guns (a coalition of over 600 mayors that targets illegal guns nationwide) concluded that routine inspections of gun dealers provide law enforcement with more opportunities to detect potential illegal gun activity, including improper recordkeeping by dealers whose gun inventories do not match their sales records. The report presented data showing that states that do not permit or require inspections of gun dealers are the sources of guns recovered from crimes in other states at a rate that is 50% greater than states that do have such inspections.²⁰

(j) In August 1994, the American Bar Association enacted a resolution expressing support for legislation to increase the number of permitted yearly inspections of firearms dealers and require federally licensed dealers to, *inter alia*:

- (1) Maintain adequate business liability insurance;
- (2) Pay annual fees to cover the costs of investigating license applications; and
- (3) Require all employees to undergo background checks.²¹

(k) A 2009 study found that cities in states that comprehensively regulate retail firearms dealers and cities where these businesses undergo regular compliance inspections have significantly lower levels of gun trafficking than other cities.²²

(l) Law enforcement agencies in jurisdictions that require ammunition sellers to keep records of their ammunition sales have cross-referenced this information with state-maintained information regarding persons prohibited from possessing firearms and ammunition. These law enforcement agencies have had great success in using this information to detect illegal possessors of firearms and ammunition.²³

(m) The American public overwhelmingly supports the regulation of firearms dealers. A nationwide poll conducted in March and April 2008 found that:

- (1) 91% of Americans favor requiring gun stores to perform background checks on employees;
- (2) 86% of Americans favor requiring gun retailers to inspect their inventories every year to report stolen or missing guns;
- (3) 88% of Americans favor requiring gun stores to keep all guns locked securely to prevent theft; and
- (4) 74% of Americans favor requiring gun retailers to videotape all gun sales.²⁴

(n) It is the purpose and intent of the [Legislative Body] in enacting this Chapter to fill the gaps in existing laws regulating firearms dealers and ammunition sellers, so as to reduce the numbers of firearm deaths and injuries among the general public resulting from the irresponsible or criminal use of firearms and ammunition. The [Legislative Body] believes this law will help:

- (1) Ensure that firearms dealers and ammunition sellers will conduct their businesses in a responsible manner;
- (2) Detect and prevent illegal trafficking of firearms and ammunition by firearms dealers and ammunition sellers and their employees, by, among other things, ensuring that employees are eligible to possess guns and ammunition; and
- (3) Prevent the loss and theft of firearms and ammunition from firearms dealers and ammunition sellers.

Sec. 2 Definitions

As used in this Chapter:

[In addition to the terms defined below, the definitions of commonly used terms, such as "Ammunition," "Department," "Firearm," "Law enforcement officer," and "Person," which are included in the Appendix, should be included in this section.]

- (a) "Applicant" means any person who applies for a law enforcement permit, or the renewal of such a permit, to sell, lease, or transfer firearms or ammunition.
- (b) To "engage in the business of selling, leasing, or otherwise transferring firearms or ammunition" means to:
 - (1) Conduct a business selling, leasing or transferring firearms or ammunition;
 - (2) Hold one's self out as engaged in the business of selling, leasing or otherwise transferring firearms or ammunition; or
 - (3) Sell, lease or transfer firearms or ammunition in quantity, in series, or in individual transactions, or in any other manner indicative of trade.

(c) “Permittee” means any person engaged in the business of selling, leasing, or otherwise transferring any firearm or ammunition who has obtained a law enforcement permit to sell, lease, or transfer firearms or ammunition.

Sec. 3 Law enforcement permit

It is unlawful for any person to engage in the business of selling, leasing, or otherwise transferring firearms or ammunition without a law enforcement permit, as required by this Chapter.

Sec. 4 Application for permit

(a) Any person who is required to obtain a law enforcement permit under this Chapter shall:

- (1) Appear in person at a time and place designated by the Department;
- (2) Complete and submit to the Department an application, in writing, signed under penalty of perjury, on a form prescribed by the Department;
- (3) Provide all relevant information requested to demonstrate compliance with this Chapter, including:
 - a. The applicant’s full name and any other name by which the applicant has ever been known;
 - b. The home address and telephone number of the applicant;
 - c. The occupation, business address and business telephone number of the applicant;
 - d. The license or permit numbers of all federal, state, or local licenses or permits held by the applicant that authorize the applicant to sell, lease, or otherwise transfer firearms or ammunition, if any;
 - e. Information relating to every other license or permit to sell, lease, transfer, purchase, or possess firearms or ammunition which was sought by the applicant from the federal government or from any state or subdivision of any state, including, but not limited to, the type of license or permit sought, the date of each application and whether it resulted in the issuance of the license or permit, and the date and circumstances of any revocation or suspension;
 - f. The address of the proposed location for which the permit is sought, if different than applicant’s business address;

- g. The business name, and the name of any corporation, partnership or other entity that has any ownership in, or control over, the business;
- h. The names, dates of birth, and addresses of all persons who will have access to or control of workplace firearms or ammunition, including but not limited to, the applicant's employees, agents, and supervisors, if any;
- i. Proof of a possessory interest in the property at which the proposed business will be conducted, as owner, lessee, or other legal occupant, and, if the applicant is not the owner of record of the real property upon which the applicant's business is to be located and conducted, the written consent of the owner of record of such real property to the applicant's proposed business;
- j. A floor plan of the proposed business which illustrates the applicant's compliance with security provisions, as outlined in Sec. 15 of this Chapter;
- k. Proof of compliance with all zoning laws for the operation of the business at the proposed location from the [the local planning/land use agency];
- l. Proof of compliance with all applicable federal, state and local licensing and other business laws;
- m. The applicant's agreement to indemnify, defend, and hold harmless the [Jurisdiction], its officers, agents, and employees from and against all claims, losses, costs, damages, and liabilities of any kind pursuant to the operation of the business, including attorneys fees, arising in any manner out of the negligence or intentional or willful misconduct of:
 - i. The applicant;
 - ii. The applicant's officers, employees, agents and/or supervisors; or
 - iii. If the business is a corporation, partnership or other entity, the officers, directors or partners of that entity;
- n. Certification of satisfaction of insurance requirements, for applicants applying for a permit to sell firearms;
- o. The date, location, and nature of all criminal convictions of the applicant, if any, in any jurisdiction in the United States; and

[If the jurisdiction adopting this law is a state, it may wish to require local law enforcement to approve issuance of the permit, as follows:

- p. Written approval from the local sheriff of the county or chief of police of the city in which the business is located, together with a statement of any

additional requirements or conditions the business must fulfill in order to comply with local law, including requirements or conditions imposed by the sheriff or chief at his or her discretion.]

- (b) The Department may charge a fee to cover the administrative costs of the issuance of the permit.

Sec. 5 Investigation by Department and employee background checks

(a) The Department shall conduct an investigation to determine, for the protection of public health and safety, whether the law enforcement permit may be issued or renewed. The Department shall require: 1) the applicant; and 2) all persons who will have access to or control of workplace firearms or ammunition, including but not limited to the applicant's employees, agents and/or supervisors, if any, to provide fingerprints, a recent photograph, a signed authorization for the release of pertinent records, and any additional information which the Department considers necessary to complete the investigation.

(b) Prior to issuance or renewal of the permit, the Department shall inspect the premises of the proposed business to ensure compliance with this Chapter.

(c) The Department may grant or renew a law enforcement permit if the applicant or permittee is in compliance with this Chapter and all other applicable federal, state, and local laws.

Sec. 6 Grounds for permit denial

(a) The Department shall deny the issuance or renewal of a law enforcement permit if the operation of the business would not or does not comply with federal, state or local law, or if the applicant or permittee:

- (1) Is under 21 years of age;
- (2) Is not licensed as required by all applicable federal, state, and local laws;²⁵
- (3) Has made a false or misleading statement of a material fact or omission of a material fact in the application for a law enforcement permit, or in any other documents submitted to the Department pursuant to this Chapter. If a permit is denied on this ground, the applicant is prohibited from reapplying for a permit for a period of five years;
- (4) Has had a license or permit to sell, lease, transfer, purchase, or possess firearms or ammunition from the federal government or the government of any state or subdivision of any state revoked, suspended or denied for good cause within the preceding five years;
- (5) Is prohibited by any federal, state or local law from purchasing or possessing firearms or ammunition, or has been convicted of:

- a. An offense relating to the manufacture, sale, possession or use of a firearm or dangerous or deadly weapon or ammunition therefor;
- b. An offense involving the use of force or violence upon the person of another;
- c. An offense involving theft, fraud, dishonesty or deceit;
- d. Within the preceding [five] years, an offense involving the manufacture, sale, possession, or use of a controlled substance; or

(6) Is currently, or has been within the preceding five years, an unlawful user of or addicted to a controlled substance.

(b) Employees, agents or supervisors of the applicant or permittee may not have access to or control over workplace firearms or ammunition until the Department has conducted an investigation pursuant to Sec. 5(a), and verified that none of the conditions listed in Sec. 6(a)(1), (4), (5) or (6) exist, as applied to those employees, agents or supervisors. A new law enforcement investigation and background verification of such persons must be conducted each time the permittee renews his or her permit, or applies for a new permit. Except as provided in subsection (c), the Department shall deny the issuance or renewal of a law enforcement permit, or shall revoke an existing permit, if the applicant or permittee allows any employee, agent or supervisor to have access to or control over workplace firearms or ammunition prior to the completion of the law enforcement investigation and background verification of those persons, or if those persons have not undergone the law enforcement investigation and background verification process within the last 365 days.

(c) Where an applicant is applying for a law enforcement permit to sell, lease or transfer firearms or ammunition within the first [90] days of the effective date of this Chapter, and where the applicant has an existing firearms dealer business which complies with all applicable federal, state and local laws, or is not a seller of firearms but is already engaged in the sale of ammunition:

(1) The applicant's current employees, agents, or supervisors may continue to have access to or control over workplace firearms and ammunition pending the completion of the Department's investigation and background verification; and

(2) Where one or more of the applicant's employees, agents, or supervisors are found to be in violation of the conditions listed in Sec. 6(a)(1), (4), (5) or (6), the applicant shall have [21] days from the mailing of written notification from the Department to verify that such persons have been removed or reassigned so that they no longer have access to or control of workplace firearms or ammunition. Failure of the applicant to comply with this subsection shall cause the Department to deny the application for a law enforcement permit.

Sec. 7 Issuance of law enforcement permit; duration

- (a) A law enforcement permit expires one year after the date of issuance. A permit may be renewed for additional one-year periods if the permittee submits a timely application for renewal, accompanied by a nonrefundable renewal fee established by [Legislative Body] resolution. Renewal of the permit is contingent upon the permittee's compliance with the terms and conditions of the original application and permit, as detailed in this Chapter, and any additional conditions arising from newly-adopted laws or determined by regulations created by the Department. Department personnel shall inspect the permitted business premises for compliance with this Chapter prior to renewal of the permit. The renewal application and the renewal fee must be received by the Department no later than [45] days before the expiration of the current permit.
- (b) A decision regarding issuance or renewal of the law enforcement permit may be appealed in the manner provided in Sec. 9 of this Chapter.

Sec. 8 Revocation of law enforcement permit

The Department may revoke the law enforcement permit of any person found to be in violation of any provision of this Chapter or any other applicable federal, state or local law.

Sec. 9 Appeal procedure for denial of application for permit or renewal of permit or revocation

- (a) In the event an application for a permit or renewal of a permit is denied or a permit is revoked, the Department shall inform the applicant or permittee in writing of the reasons for the denial or revocation. Any applicant who believes that his or her application was wrongfully denied, or permittee who believes his or her permit was wrongfully revoked may, within [30] days after receiving notice of the denial or revocation, file an appeal of the denial or revocation with the [Head of the Department]. The appeal must be made in writing, setting forth the specific grounds for the appeal.
- (b) If the applicant or permittee submits a timely appeal, the [Head of the Department] shall set a time and place for the hearing and, based upon the evidence contained in the record of such hearing, either affirm or reverse the decision of the Department. The [Head of the Department] shall provide a written decision regarding the appeal. The action of the [Head of the Department] shall be subject to judicial review in accordance with the provisions of the [jurisdiction's law regarding administrative procedures].
- (c) In the event the decision to deny the application or revoke the permit is affirmed, the decision to deny the application or revoke the permit shall become final after all time for judicial review of the decision of the [Head of the Department] has expired.

Sec. 10 Report of permit revocation to federal [and state] authorities

In addition to any other penalty or remedy, the Department shall report any person or entity whose law enforcement permit is revoked pursuant to this Chapter to the Bureau of Alcohol,

Tobacco, Firearms & Explosives within the U.S. Department of Justice *[and to the relevant state agency, if the jurisdiction adopting this law is a local jurisdiction]*.

Sec. 11 Display of law enforcement permit

The law enforcement permit, or a certified copy of it, shall be displayed in a prominent place on the business premises where it can be easily seen by those entering the premises.

Sec. 12 Nonassignability

A law enforcement permit issued under this Chapter is not assignable. Any attempt to assign a law enforcement permit shall result in revocation of the permit.

Sec. 13 Compliance by existing businesses

A person engaged in the business of selling, leasing, or otherwise transferring any firearm or ammunition on the effective date of this Chapter shall, within [90] days of the effective date, comply with this Chapter. However, any person whose business is located in any location described in Sec. 17 of this Chapter may continue to sell, lease, or transfer firearms or ammunition for up to one year after the effective date of this Chapter. After the one-year period has expired, any such person is prohibited from selling, leasing or transferring firearms or ammunition in the named location.

Sec. 14 Law enforcement inspections

Permittees shall have their places of business open for inspection by federal, state, and local law enforcement during all hours of operation. The Department shall conduct an inspection of the business in connection with the initial issuance of a permit, and thereafter conduct an inspection in connection with each annual renewal of the permit. Permittees shall maintain all records, documents, firearms, and ammunition in a manner and place accessible for inspection by federal, state and local law enforcement.

Sec. 15 On-site security

- (a) All firearms and ammunition in the inventory of a permittee must be kept at the permitted business location.
- (b) If the proposed or current business location is to be used at least in part for the sale of firearms, all perimeter doorways, windows, and heating, ventilating, air-conditioning, and service openings shall be secured in a manner prescribed by the Department.
- (c) Any time a permitted business location is not open to the public, every firearm shall be stored in one of the following ways:

- (1) In a locked fireproof safe or vault in the licensee's business premises that meets Underwriters Laboratories Residential Security Container rating standards by a Nationally Recognized Testing Laboratory (NRTL);²⁶ or
- (2) Secured with a hardened steel rod or cable of at least one-fourth inch in diameter through the trigger guard of the firearm. No more than five firearms may be affixed to any one rod or cable at any time.
- (d) Any time a permitted business location is open to the public, all firearms shall be kept unloaded and all firearms and ammunition shall be kept inaccessible to the public, except in the immediate presence of and under the direct supervision of the permittee or his or her employees.
- (e) The permitted business location shall be secured by an alarm system that is installed and maintained by an alarm company operator properly licensed pursuant to state law. The alarm system must be monitored by a central station listed by Underwriters Laboratories, Inc., and covered by an active Underwriters Laboratories, Inc. alarm system certificate with a #3 extent of protection.²⁷
- (f) The permitted business location shall be equipped with a video surveillance system sufficient to monitor the critical areas of the business premises, including, but not limited to, all places where firearms or ammunition are stored, handled, sold, transferred, or carried. The video surveillance system shall operate continuously, without interruption, whenever the permitted business location is open to the public. Whenever the permitted business location is not open to the public, the system shall be triggered by a motion detector and begin recording immediately upon detection of any motion within the monitored area. In addition, the sale or transfer of a firearm or ammunition shall be recorded by the video surveillance system in such a way that the facial features of the purchaser or transferee are clearly visible. The stored images shall be maintained at the permitted business location for a period not less than one year from the date of recordation and shall be made available for inspection by federal, state or local law enforcement upon request. The permittee shall post a sign in a conspicuous place at each entrance to the premises that states in block letters not less than one inch in height: THESE PREMISES ARE UNDER VIDEO SURVEILLANCE. YOUR IMAGE MAY BE RECORDED.
- (g) The Department may impose security requirements in addition to those listed in this section prior to issuance of the law enforcement permit. Failure to fully comply with the requirements of this section or additional security requirements imposed by the Department shall be sufficient cause for denial or revocation of the law enforcement permit by the Department.

Sec. 16 Liability insurance

- (a) If the proposed or current business location is to be used for the sale of firearms, no law enforcement permit shall be issued or renewed unless there is in effect a policy of insurance in a form approved by the [Jurisdiction] and executed by an insurance company approved by the [Jurisdiction], insuring the applicant against liability for damage to property and for injury to, or death of, any person as a result of the theft, sale, lease or transfer or offering for sale, lease or transfer of a firearm or ammunition, or any other operations of the business. The policy shall

also name the [Jurisdiction] and its officers, employees and agents as additional insureds. The limits of liability shall not be less than \$1,000,000 for each incident of damage to property or incident of injury or death to a person; provided, however, that increased limits of liability may be required by the Department if deemed necessary.

(b) The policy of insurance shall contain an endorsement providing that the policy shall not be cancelled until written notice has been given to the Department and the jurisdiction at least 30 days prior to the time the cancellation becomes effective.

(c) Upon expiration of the policy of insurance, and if no additional insurance is obtained, the law enforcement permit is considered revoked without further notice.

Sec. 17 Location of business premises

(a) The business shall be carried on only in the building located at the street address shown on the permit. This requirement does not prohibit the permittee from participating in a gun show or event as defined under federal law²⁸ that is authorized by federal, state, or local law upon compliance with those laws.

(b) The business premises shall not be located in any district or area that is zoned for residential use, or within 1,500 feet of any school, pre-school, day-care facility, park, community center, place of worship, liquor store, bar, youth center, video arcade, amusement park (not including a temporary carnival or similar event), or residentially zoned district or area.

Sec. 18 Warnings to consumers

A permittee shall post conspicuously within the licensed premises the following warning in block letters not less than one inch in height: CHILDREN ARE ATTRACTED TO AND CAN OPERATE FIREARMS THAT MAY CAUSE SEVERE INJURIES OR DEATH. PREVENT CHILD ACCESS BY ALWAYS KEEPING GUNS LOCKED AWAY AND UNLOADED WHEN NOT IN USE, WITH AMMUNITION STORED SEPARATELY.²⁹

Sec. 19 Duties upon sale, lease, or transfer

(a) No permittee or agent, employee, or other person acting under the permittee's authority shall sell or otherwise transfer ownership of, or lease or loan any firearm or ammunition from the permittee's inventory until he or she has viewed the transferee's driver's license or other government-issued identification card that contains the transferee's signature, photograph and age.

(b) No permittee or agent, employee, or other person acting under the permittee's authority shall sell or otherwise transfer ownership of, or lease or loan any firearm or ammunition to any person the permittee or agent, employee, or other person acting under the permittee's authority knows or has reasonable cause to believe is prohibited by federal, state, or local law from purchasing or possessing the firearm or ammunition.

Sec. 20 Sales records and reporting

(a) No permittee or agent, employee, or other person acting under the permittee's authority shall sell or otherwise transfer ownership of, or lease or loan any firearm or ammunition from the permittee's inventory without recording the following information on a paper or electronic form to be provided by the Department:

- (1) The date of the transaction;
- (2) The name, address, telephone number, and date of birth of the transferee;
- (3) The number of the transferee's current driver's license or other government-issued identification card containing a photograph of the transferee and the name of the governmental authority that issued it;
- (4) The make, model, caliber or gauge, and serial number of any firearm transferred, and the brand, type, caliber or gauge, and amount of any ammunition transferred;
- (5) The transferee's signature; and
- (6) The name of the permittee's agent or employee who processed the transaction.

(b) The permittee and any agent, employee, or other person acting under the permittee's authority shall also, at the time of purchase or transfer, obtain the right thumbprint of the transferee on the form described above.

(c) Within [24 hours] of a transfer, the permittee or any agents, employees, or other persons acting under the permittee's authority shall electronically transmit to the Department all of the information set forth on the form described above. The electronic transmittal shall be by a method, and in a format, approved by the Department. The Department shall maintain these records for at least [ten] years.

(d) The records created in accordance with this section must be permanently maintained on the business premises of the permittee and shall be made available for inspection by federal, state or local law enforcement upon request.

Sec. 21 Firearm acquisitions records and reporting

(a) The permittee or an agent, employee, or other person acting under the permittee's authority shall record the following information regarding every firearm received or acquired for the permittee's inventory on a form to be provided by the Department:

- (1) The name of the permittee;
- (2) The particular make, model, caliber or gauge, and serial number of each firearm received or acquired;

- (3) The date each firearm was received or acquired; and
- (4) The name, address, and telephone number of the person from whom each firearm was received or acquired.

(b) Within [24 hours] of the receipt or acquisition of any firearm, the permittee and any agents, employees, or other persons acting under the permittee's authority shall electronically transmit to the Department all of the information set forth in paragraph (a). The electronic transmittal shall be by a method, and in a format, approved by the Department. The Department shall maintain these records for at least [ten] years.

(c) The records created in accordance with this section must be permanently maintained on the business premises of the permittee and shall be made available for inspection by federal, state or local law enforcement upon request.

Sec. 22 Inventory reports

Within the first five business days of April and October of each year, the permittee shall cause a physical inventory to be taken that includes a listing of each firearm held by the permittee by make, model, caliber or gauge, and serial number, together with a listing of each firearm the permittee has sold since the last inventory period. In addition, the inventory shall include a listing of each firearm lost or stolen since the last inventory period. Immediately upon completion of the inventory, the permittee shall forward a copy of the inventory to the address specified by the Department, by such means as specified by the Department. The Department shall maintain a copy of the inventory for at least [ten] years. With each copy of the inventory, the permittee shall include an affidavit signed by an authorized agent or employee on behalf of the permittee under penalty of perjury stating that within the first five business days of that April or October, as the case may be, the signer personally confirmed the presence of the firearms reported on the inventory. The permittee shall maintain a copy of the inventory on the premises for which the law enforcement permit was issued for a period of not less than [five] years from the date of the inventory and shall make the copy available for inspection by federal, state, or local law enforcement upon request.

Sec. 23 Lost or stolen firearms reporting

It is unlawful for any permittee to fail to report to the Department the theft or loss of a firearm or ammunition from the permittee's inventory within [48 hours] of the time he or she knew or reasonably should have known that the firearm or ammunition has been stolen or lost.³⁰

Sec. 24 Restricted admittance of minors and other prohibited purchasers

[A jurisdiction may wish to alter the language below to coincide with the jurisdiction's laws regarding the minimum age to purchase or possess firearms. The language below was drafted with a jurisdiction in mind that imposes a minimum age of 21 for purchase or possession of handguns, and a minimum age of 18 for purchase or possession of other firearms.]

(a) Where firearm sales activity is the primary business performed at the permitted business location, no permittee or any of his or her agents, employees, or other persons acting under the permittee's authority shall allow the following persons to enter into or remain on the premises unless accompanied by his or her parent or legal guardian:

(1) Any person under 21 years of age, if the permittee sells, keeps or displays handguns, provided that this provision shall not prevent a supervisory agent or employee who has the right to control activities at the business premises from keeping a single handgun on the business premises for purposes of lawful self-defense; or

(2) Any person under 18 years of age, if the permittee sells, keeps or displays only firearms other than handguns.

(b) Where firearm sales activity is the primary business performed at the permitted business location, the permittee and any of his or her agents, employees, or other persons acting under the permittee's authority shall be responsible for requiring clear evidence of age and identity of persons to prevent the entry of persons not permitted to enter the premises pursuant to subsection (a) by reason of age. Clear evidence of age and identity is defined as current driver's license or other government-issued identification card containing the bearer's signature, photograph and date of birth.

(c) The permittee shall post the following conspicuously at each entrance to the permitted business location in block letters not less than one inch in height:

(1) If the permittee sells, keeps or displays handguns, the sign shall state, "HANDGUNS ARE KEPT, DISPLAYED OR OFFERED FOR SALE ON THE PREMISES, AND PERSONS UNDER THE AGE OF 21 ARE EXCLUDED UNLESS ACCOMPANIED BY A PARENT OR LEGAL GUARDIAN."

(2) If the permittee sells, keeps or displays only firearms other than handguns, the sign shall state, "FIREARMS ARE KEPT, DISPLAYED OR OFFERED FOR SALE ON THE PREMISES, AND PERSONS UNDER THE AGE OF 18 ARE EXCLUDED UNLESS ACCOMPANIED BY A PARENT OR LEGAL GUARDIAN."

(d) Where firearm sales activity is the primary business performed at the permitted business location, no permittee or any of his or her agents, employees, or other persons acting under the permittee's authority shall allow any person to enter into or remain on the premises who the permittee or any of his or her agents, employees, or other persons acting under the permittee's authority knows or has reason to know is prohibited from possessing or purchasing firearms pursuant to federal, state, or local law.

Sec. 25 Civil liability

(a) As provided in 15 U.S.C. § 7903(5)(A)(iii), any person or other entity with a permit under this Chapter who has knowingly violated any provision of a federal or state statute

applicable to the sale or marketing of a firearm shall be liable in a civil action to any person injured by such violation.³¹

(b) As provided in 15 U.S.C. § 7903(5)(A)(ii), any person or other entity with a permit under this Chapter who has violated any federal, state or local law shall be liable in a civil action to any person injured by such violation under the doctrine of negligence per se.³²

(c) As provided in 15 U.S.C. § 7903(5)(A)(ii), any person or other entity who negligently entrusts a firearm or ammunition to another person shall be liable in a civil action to any person injured and for any and all damages resulting from the negligent entrustment.³³ For purposes of this provision, the term “negligent entrustment” shall have the meaning given in 15 U.S.C. § 7903(5)(B).

(d) The remedies set forth in this section are in addition to any other remedies provided for by law.

For suggested language regarding Sections 26 – 28, Administrative rules and regulations, Penalties, and Severability, see the Appendix.

* Where the words “[Act/Ordinance],” “[Jurisdiction],” “[Legislative Body]” or similar variations appear, simply select the appropriate designation for your jurisdiction.

¹ 18 U.S.C. § 922(a)(1)(A).

² For licensee figures, see Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Dep’t of Justice, *Listing of Federal Firearms Licensees* (2011), <http://www.atf.gov/about/foia/ffl-list.html>.

³ Mayors Against Illegal Guns, *The Movement of Illegal Guns in America: The Link between Gun Laws and Interstate Gun Trafficking* 18, (Dec. 2008), available at:

www.mayorsagainstillegalguns.org/downloads/pdf/trace_report_final.pdf

⁴ Brady Center to Prevent Gun Violence, *Shady Dealings: Illegal Gun Trafficking From Licensed Gun Dealers* 23 (Jan. 2007), available at <http://www.bradycenter.org/xshare/pdf/reports/shady-dealings.pdf>. In 2006, ATF increased its total revocations to 131. *Id.*

⁵ Office of the Inspector General, Evaluation and Inspections Division, U.S. Dep’t of Justice, *Inspection of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives* i (July 2004), available at <http://www.usdoj.gov/oig/reports/ATF/e0405/exec.htm>.

⁶ A Federal Firearms Licensee can be a manufacturer, importer, dealer or collector of firearms, among other classifications. Hereinafter in this model law, we refer only to firearms dealers, and thus use the abbreviated “FFL” to describe gun dealers.

⁷ Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* ix (June 2000), available at

http://www.mayorsagainstillegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf.

⁸ *Id.* at x.

⁹ Brady Center to Prevent Gun Violence, “Trivial Violations”? *The Myth of Overzealous Federal Enforcement Actions Against Licensed Gun Dealers* 1 (Sept. 2006), available at www.bradycenter.org/xshare/pdf/reports/trivial-violations.pdf.

¹⁰ Bureau of Alcohol, Tobacco, Firearms and Explosives, *FFL Compliance Inspections Fact Sheet*, ¶ 4 (June 2008), <http://www.atf.gov/publications/factsheets/factsheet-ffl-compliance.html>.

¹¹ Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of the Treasury, *Commerce in Firearms in the United States* 16 (2000), available at www.mayorsagainstillegalguns.org/downloads/pdf/Commerce_in_Firearms_2000.pdf.

¹² Brady Center to Prevent Gun Violence, *supra* note 4, at 24-26.

¹³ A number of state and local jurisdictions have adopted such laws, however. For a list of California jurisdictions with such laws, see Legal Community Against Violence, *LCAV Model Law Regulating Firearms Dealers and Ammunition Sellers (Local Governments in California)* 8-9 (2010), available at http://www.lcav.org/publications-briefs/model_laws/LCAV_Model_Dealer_Ordinance_CA.pdf.

¹⁴ The landmark federal Gun Control Act of 1968 (Pub. L. No. 90-618, 82 Stat. 1213) required, among other things, that all licensed ammunition manufacturers and dealers maintain ammunition sales logs. At the behest of the gun lobby, the Firearms Owners' Protection Act of 1986 repealed the ammunition sales recordkeeping provision.

¹⁵ For a list of California jurisdictions with such laws, see Legal Community Against Violence, *supra* note 13, at 10-11.

¹⁶ 18 U.S.C. § 923(d)(1)(F).

¹⁷ Alabama (Ala. Code § 13A-11-78; handgun sales only), California (Cal. Penal Code § 12070(a)), Connecticut (Conn. Gen. Stat. § 29-28; handgun sales only), Delaware (Del. Code Ann. tit. 24, § 901), District of Columbia (D.C. Code § 7-2504.01(b)), Georgia (Ga. Code Ann. § 43-16-2; handgun sales only), Hawaii (Haw. Rev. Stat. § 134-31), Indiana (Ind. Code §§ 35-47-2-14 to 35-47-2-16; handgun sales only), Maryland (Md. Code Ann., Pub. Safety §§ 5-101, 5-106; handgun and assault weapon sales only), Massachusetts (Mass. Gen. Laws ch. 140, §§ 122, 128), New Hampshire (N.H. Rev. Stat. Ann. §§ 159:8, 159:10; handgun sales only), New Jersey (N.J. Stat. Ann. § 2C:58-2(a)), New York (N.Y. Penal Law §§ 265.00(9), 400.00(2); handgun and assault weapon sales only), Pennsylvania (18 Pa. Cons. Stat. § 6112), Rhode Island (R.I. Gen. Laws § 11-47-38; handgun sales only), South Carolina (S.C. Code Ann. § 23-31-130; handgun sales only), Washington (Wash. Rev. Code Ann. § 9A.11.110) and Wisconsin (Wis. Admin. Code Jus § 10.04; handgun sales only). For more information about existing state and local laws regulating firearm dealers and ammunition sellers, see Legal Community Against Violence, *Regulating Guns in America: An Evaluation and Comparative Analysis of Federal, State and Selected Local Gun Laws* 51-66, 149-161 (Feb. 2008), available at http://www.lcav.org/publications-briefs/reports_analyses/RegGuns.entire.report.pdf.

¹⁸ Chicago (Chicago, Ill., Code §§ 8-20-140 – 8-20-210). Cleveland (Cleveland, Ohio, Code § 674.07; handgun sales only), Columbus (Columbus, Ohio, Code § 545.02), Hartford (Hartford, Conn., Code § 21-51; handgun sales only), Los Angeles (Los Angeles, Cal., Code ch. X, art. 3, div. 9, § 103.314), New York City (New York, N.Y. Admin. Code § 10-302), Omaha (Omaha, Neb., Code § 19-371), San Francisco (San Francisco, Cal., Police Code art. 9, § 613).

¹⁹ Int'l Ass'n of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities* 14 (Sept. 2007), available at <http://www.theiacp.org/LinkClick.aspx?fileticket=%2Fs0LiOkJK5Q%3D&tabid=302>.

²⁰ Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking* 26-27 (Sept. 2010), available at <http://www.tracetheguns.org/report.pdf>.

²¹ American Bar Association, *Item 10E*, Annual Meeting 1994, http://www.americanbar.org/groups/criminal_justice/policy/index_aba_criminal_justice_policies_by_meeting.html#am9410e.

²² Daniel W. Webster et al., *Effects of State-Level Firearm Seller Accountability Policies on Firearms Trafficking*, 86 J. Urb. Health 525 (July 2009).

²³ Both Los Angeles and Sacramento have seen direct law enforcement successes leading to illegal firearms and ammunition confiscations, and illegal possessor arrests and prosecutions, because of their ammunition sales recordkeeping and reporting ordinances. See, e.g., Sacramento, Cal., City Code, Chapters 5.64, 5.66; *Presentation: Ammunition Sales Record Study*, (Aug. 12, 2008) (Presentation by Rick Braziel, Sacramento Chief of Police, et al.), http://sacramento.granicus.com/MetaViewer.php?view_id=8&clip_id=1590&meta_id=155275.

²⁴ Greenberg Quinlan Rosner Research and The Tarrance Group for Mayors Against Illegal Guns, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* 3, 6, April 10, 2008, http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf.

²⁵ A jurisdiction may choose to replace this language with: “(2) Is not licensed as a firearms dealer under all applicable federal, state and local laws.” This option would prohibit the sale of ammunition by persons not engaged in the business of selling firearms, such as hardware and convenience stores.

²⁶ See <http://www.ul.com/> for more information about Underwriters Laboratories-approved residential security containers.

²⁷ Underwriters Laboratories, Inc. uses the term “extent of protection” to refer to the amount of alarm protection installed to protect a particular area, room or container. Systems with a #3 extent of protection include complete protection for all accessible openings, and partial motion and sound detection at certain other areas of the premises. For more information, see Central Station Alarm Association, *A Practical Guide to Central Station Burglar Alarm Systems* (3rd ed. 2005).

²⁸ 27 C.F.R. § 478.100(b).

²⁹ A jurisdiction also may require firearms dealers and ammunition sellers to post warnings to consumers about particular features of the jurisdiction's law, such as those mandating: 1) the reporting of lost or stolen firearms; or 2) that all firearm transfers must be processed by a licensed dealer.

³⁰ Federal law requires federally licensed firearms dealers to report the loss or theft of a firearm to the U.S. Attorney General or local law enforcement within 48 hours of discovering the loss or theft. 18 U.S.C. § 923(g)(6). Because federal law gives dealers the option to notify the Attorney General rather than local law enforcement of a lost or stolen firearm, local law enforcement may not be made aware of the loss or theft. Federal law also does not require a dealer to notify state authorities of a lost or stolen firearm.

³¹ Federal law grants firearms dealers and others immunity from certain civil lawsuits. 15 U.S.C. §§ 7901- 7903. However, federal law exempts from this immunity any action in which a seller of a firearm knowingly violated a state or federal statute applicable to the sale or marketing of a firearm where the violation was a proximate cause of the harm for which relief is sought. 15 U.S.C. § 7903(5)(A)(iii).

³² The federal immunity law also exempts any action brought against a seller for negligence per se. 15 U.S.C. § 7903(5)(A)(ii).

³³ The federal immunity law additionally exempts any action brought against a seller for negligent entrustment. *Id.*

E. Model Law Requiring the Reporting of Lost or Stolen Firearms

This model law requires the reporting of lost or stolen firearms. Under its provisions, a firearm owner who discovers or should have discovered that a firearm in his or her possession is missing must report the loss or theft to law enforcement within 48 hours. This requirement applies to any firearm owner who resides in the jurisdiction or whose firearm is lost or stolen in the jurisdiction.

Laws requiring the reporting of lost or stolen firearms are beneficial to law enforcement for several reasons. As discussed in the findings below, reporting laws: 1) help deter and prosecute gun traffickers and criminals who often falsely claim that a crime gun that has been traced to them was lost or stolen in order to hide their involvement in the crime; 2) help disarm persons ineligible to possess firearms by deterring a person who has fallen into a prohibited category from falsely claiming that his or her firearm was lost or stolen; and 3) help return lost or stolen firearms to their owners. Reporting laws also make gun owners more accountable for their weapons.

A September 2010 report by Mayors Against Illegal Guns (a coalition of over 600 mayors that targets illegal guns nationwide) analyzed the impact of a variety of state laws on interstate gun trafficking. That report found that states that do not require gun owners to report lost or stolen guns are the sources of crime guns recovered in other states at a rate more than two and a half times greater than states that do have lost or stolen reporting laws. A 2007 report by the International Association of Chiefs of Police concluded that early awareness by law enforcement of every lost and stolen gun would enhance their ability to recover those guns and reduce gun violence. The report recommends that state and local governments mandate reporting of lost or stolen firearms.

Federal law requires firearms dealers, but not firearm owners, to report the loss or theft of firearms. Laws requiring the reporting of lost or stolen firearms have been adopted in seven states and the District of Columbia, and in a number of local jurisdictions nationwide.

The American public overwhelmingly supports laws requiring the reporting of lost or stolen firearms. A 2011 survey found that 94% of those surveyed, including 94% of gun owners, favor such laws.

Text of Model Law

CHAPTER 1 REQUIRING THE REPORTING OF LOST OR STOLEN FIREARMS

Sec. 1	Legislative findings, purpose and intent
Sec. 2	Definitions
Sec. 3	Duty to report the loss or theft of a firearm
Sec. 4	Exceptions
Sec. 5	False report of lost or stolen firearm
Sec. 6	Administrative rules and regulations
Sec. 7	Penalties
Sec. 8	Severability

Sec. 1 Legislative findings, purpose and intent

[General findings regarding gun violence throughout the U.S. are provided in the Appendix of this publication.]

The [Legislative Body]* hereby finds and declares:

- (a) Federal law requires licensed firearms dealers, but not firearms owners, to report the loss or theft of firearms to law enforcement within 48 hours.¹
- (b) Laws requiring the reporting of lost or stolen firearms are useful to law enforcement for several reasons. When a crime gun is traced by law enforcement to the last purchaser of record, that person may falsely claim that the gun was lost or stolen to hide his or her involvement in the crime or in gun trafficking. Reporting laws provide a tool for law enforcement to detect this behavior and charge criminals who engage in it.
- (c) A December 2008 report by Mayors Against Illegal Guns concluded that lost or stolen firearm reporting laws “can help law enforcement more easily identify and prosecute gun traffickers.”² A September 2010 report by that organization presented data showing that states that do not require gun owners to report lost or stolen guns to police are the source of crime guns recovered in other states at a rate more than two and a half times greater than states that have lost or stolen reporting laws.³
- (d) Reporting laws help disarm persons prohibited from possessing firearms. When a person who legally owned a gun falls into a prohibited category, it is crucial for law enforcement to be able to remove the firearm from his or her possession. For example, a gun owner who is convicted of a felony or who becomes the subject of a domestic violence restraining order is not permitted under federal law to continue to possess firearms. However, when ordered to surrender a firearm by law enforcement or a judge, the owner may falsely claim it has been lost or stolen. Mandatory reporting laws provide a deterrent to this behavior.

- (e) Reporting laws protect gun owners from unwarranted criminal accusations when their guns are recovered at a crime scene, and make it easier for law enforcement to locate a lost or stolen firearm and return it to its lawful owner. In a 2007 report, the International Association of Chiefs of Police concluded that, “law enforcement’s early awareness of every lost and stolen gun will enhance their ability to recover those guns and reduce gun violence.” The report recommends that state and local governments mandate reporting of lost or stolen firearms.⁴
- (f) At least 500,000 firearms are stolen each year from residences across the United States.⁵
- (g) The extreme danger firearms pose to public safety requires a heightened level of accountability on the part of individuals who choose to own firearms. Reporting laws make gun owners more accountable for their weapons.
- (h) Laws requiring the reporting of lost or stolen firearms have been adopted in jurisdictions throughout the country. Firearm owners are currently required to report lost or stolen firearms in seven states and the District of Columbia,⁶ and in a number of local jurisdictions in California⁷ and Pennsylvania,⁸ as well as in certain other major cities, including Chicago, Illinois;⁹ Hartford, Connecticut;¹⁰ and New York, New York.¹¹
- (i) The American public overwhelmingly supports laws requiring the reporting of lost or stolen firearms. A 2011 survey of public attitudes toward gun violence prevention measures found almost unanimous support for these laws: 94% of all people surveyed, including 94% of gun owners polled, favored reporting laws.¹²
- (j) It is the purpose and intent of the [Legislative Body] in enacting this Chapter to require firearm owners to report to law enforcement if a firearm they own or possess is lost or stolen. The [Legislative Body] believes this requirement will help improve public safety by deterring gun trafficking, improving gun crime investigations, protecting gun owners from unwarranted accusations, and enabling law enforcement to disarm ineligible gun owners and return lost or stolen firearms to their owners.

Sec. 2 Definitions

As used in this Chapter:

[The definitions of commonly used terms, such as “Department,” “Firearm,” “Law enforcement,” and “Person,” which are included in the Appendix should be included in this section.]

Sec. 3 Duty to report the loss or theft of a firearm

It is unlawful for any person to fail to report to the Department the theft or loss of a firearm he or she owns or possesses within forty-eight (48) hours¹³ of the time he or she knew or reasonably should have known¹⁴ that the firearm had been stolen or lost, if the person resides in [Jurisdiction].¹⁵

Sec. 4 Exceptions

Section 3 shall not apply to the following persons:

- (a) Any law enforcement or corrections agency, or law enforcement or corrections officer acting within the course and scope of his or her employment or official duties; or
- (b) A United States Marshal or member of the Armed Forces of the United States or the National Guard, or a federal official, who is required to possess a firearm in the operation of his or her official duties.

Sec. 5 False report of lost or stolen firearm

It is unlawful for any person to report to the Department that a firearm has been lost or stolen, knowing the report to be false.

For suggested language regarding Sections 6 – 8, Administrative rules and regulations, Penalties, and Severability, see the Appendix.

*Where the words “[Act/Ordinance],” “[Jurisdiction],” “[Legislative Body]” or similar variations appear, simply select the appropriate designation for your jurisdiction.

¹ 18 U.S.C. § 923(g)(6).

² Mayors Against Illegal Guns, *The Movement of Illegal Guns in America: The Link between Gun Laws and Interstate Gun Trafficking* 14 (Dec. 2008), at

http://www.mayorsagainstillegalsguns.org/downloads/pdf/trace_report_final.pdf.

³ Mayors Against Illegal Guns, *Trace the Guns: The Link Between Gun Laws and Interstate Gun Trafficking* 22-23 (Sept. 2010), at <http://www.tracetheguns.org/report.pdf>.

⁴ International Association of Chiefs of Police, *Taking a Stand: Reducing Gun Violence in Our Communities* 22 (Sept. 2007), at <http://www.theiacp.org/LinkClick.aspx?fileticket=%2Fs0LiOkJK5Q%3D&tabid=87>.

⁵ Bureau of Alcohol, Tobacco & Firearms, U.S. Dep’t of Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* 41 (2000), available at

http://www.mayorsagainstillegalsguns.org/downloads/pdf/Following_the_Gun%202000.pdf.

⁶ Conn. Gen. Stat. § 53-202g; Mass. Gen. Laws ch. 140, § 129C; Mich. Comp. Laws § 28.430 (theft only); N.J. Stat. Ann. § 2C:58-19; N.Y. Penal Law § 400.10; Ohio Rev. Code Ann. § 2923.20(A)(5), (B); R.I. Gen. Laws § 11-47-48.1; D.C. Code Ann. §§ 7-2502.08(a)(1).

⁷ Los Angeles (Los Angeles, Cal., Code ch. V, art. 5, § 55.12), Oakland (Oakland, Cal. Code § 9.36.131) and San Francisco (San Francisco, Cal., Police Code art. 9, § 616) have lost or stolen gun reporting laws.

⁸ See Mayors Against Illegal Guns, *Reporting Lost and Stolen Guns: Pennsylvania Mayors Advance Effort to Require Reporting of Lost and Stolen Guns*, at <http://www.mayorsagainstillegalsguns.org/html/local/pa-lost-stolen.shtml>.

⁹ Chicago, Ill., Code § 8-20-185(a)(1).

¹⁰ Hartford, Conn., Code §§ 21-61 – 21-63.

¹¹ New York, N.Y., Rules tit. 38, §§ 3-09, 5-30.

¹² American Viewpoint/Momentum Analysis, *Momentum Analysis & American Viewpoint National Survey (for Mayors Against Illegal Guns)* (Jan. 14, 2011) at http://www.mayorsagainstillegalsguns.org/downloads/pdf/maig_poll_01_18_2011.pdf. See also Mayors Against Illegal Guns, *New Polls In Five Bellwether States Show Overwhelming Support To Fix Gun Background Check System*, (Mar. 2, 2011), at <http://www.mayorsagainstillegalsguns.org/html/media-center/pr020-11.shtml> (showing similar results from polls in five bellwether states – Arizona, Colorado, Indiana, Ohio and Virginia); and Dr. Frank Luntz/Word Doctors for Mayors Against Illegal Guns, *America’s Gun Owners Support Common Sense Gun Laws* 13 (Dec. 2009) at http://www.mayorsagainstillegalsguns.org/downloads/pdf/luntz_poll_slides.pdf (showing strong

support for requiring gun owners to alert police if their guns are lost or stolen by NRA members (78%) and non-NRA member gun owners (88%)).

¹³ Forty-eight hours is the reporting time period required of dealers by federal law. 18 U.S.C. § 923(g)(6).

¹⁴ This model law uses an objective standard regarding the onset of the period within which the loss or theft of a firearm may be reported. In other words, a person is required to report the loss or theft of a firearm within 48 hours of the time he or she knew *or reasonably should have known* of such loss or theft. The alternative, a subjective standard, based on when the owner actually became aware of the loss or theft, would allow dishonest gun owners to thwart the law simply by claiming that they never knew the firearm was lost or stolen.

¹⁵ A jurisdiction may wish to add the following optional provision to this model to decrease the likelihood that a gun owner will falsely claim that his or her gun was lost or stolen before the law went into effect: “It is unlawful for any person to fail to report to the Department within one hundred twenty (120) days of the effective date of this law the theft or loss of a firearm he or she owned or possessed within the five years prior to the effective date of this law if the person resided in [Jurisdiction] at the time of the loss or theft, or the loss or theft occurred in [Jurisdiction], unless the firearm has been recovered.”

F. Model Law Imposing a Waiting Period Prior to the Sale of a Firearm

This model law imposes a ten-day waiting period prior to the sale of a firearm. Laws imposing waiting periods require that a specified number of days elapse between the time a firearm is purchased and the time it is physically transferred to the purchaser. The purpose of a waiting period is to: 1) give law enforcement officials adequate time to perform a thorough background check; and 2) provide a “cooling off” period to help guard against impulsive acts of violence.

There is no federal waiting period. Federal law allows a dealer to transfer a firearm to a prospective purchaser as soon as he or she passes a background check. Moreover, if the FBI is unable to complete a background check within three business days, federal law allows the transfer to occur by default. As a result, thousands of firearms are transferred to ineligible persons each year. This model law addresses this problem by requiring a licensed firearms dealer to await law enforcement approval prior to the sale, so that law enforcement is able to complete a background check on the prospective purchaser regardless of whether the waiting period has elapsed.

As discussed in the findings below, the American public overwhelmingly supports laws imposing waiting periods. A nationwide poll conducted in June 2008 found that 86% of Americans favor such laws. Eleven states and the District of Columbia currently have waiting periods that apply to the purchase of some or all firearms.

This model is intended for use by a jurisdiction that requires all firearm sales to be conducted through a licensed firearms dealer. LCAV recommends that jurisdictions consider requiring all firearm sales to be processed through a licensed dealer, because federal law requires licensed dealers to conduct a background check on the purchaser and maintain a record of the transaction, but does not impose these requirements on private gun sellers. For more information, see LCAV’s Model Law Requiring Background Checks on All Gun Purchasers.

Text of Model Law

CHAPTER 1 IMPOSING A WAITING PERIOD PRIOR TO THE SALE OF A FIREARM

- Sec. 1 Legislative findings, purpose and intent**
- Sec. 2 Definitions**
- Sec. 3 Waiting period prior to firearm purchase**
- Sec. 4 Exceptions**
- Sec. 5 Administrative rules and regulations**
- Sec. 6 Penalties**
- Sec. 7 Severability**

Sec. 1 Legislative findings, purpose and intent

[General findings regarding gun violence throughout the U.S. are provided in the Appendix of this publication. Findings regarding the need for and benefits of this model law are provided below. However, findings in support of a law are most effective when they are specific and localized. Whenever possible, data from the jurisdiction adopting the law, including data from law enforcement, the public health community and descriptions of particularly relevant incidents, should be added.]

The [Legislative Body]^{*} hereby finds and declares:

- (a) Laws imposing a waiting period prior to the sale of a firearm give law enforcement officials adequate time to perform a thorough background check on the prospective purchaser, and provide a “cooling off” period to help guard against impulsive acts of violence.
- (b) There is no federal waiting period. Under federal law, a dealer may transfer a firearm to a prospective purchaser as soon as he or she passes a background check.¹ If the FBI is unable to complete a background check within three business days, the dealer may complete the transfer by default.²
- (c) In 2007, the FBI was unable to complete a background check within three business days for over 134,000 firearm transactions, and the FBI later determined that at least 3,055 ineligible persons had been sold firearms by default within that year.³ FBI investigations of prohibited purchasers who were allowed to buy firearms by default typically take 25 days to complete. As a result, the FBI has recommended extending the maximum time allowed for conducting background checks to allow more time to complete such checks and to reduce the number of prohibited purchasers who are able to purchase firearms by default.⁴
- (d) Eleven states and the District of Columbia currently have waiting periods that apply to the purchase of some or all firearms. California,⁵ Hawaii,⁶ Illinois,⁷ Rhode Island,⁸ and the District of Columbia⁹ impose a statutory waiting period on all firearm purchases. Both Maryland¹⁰ and Minnesota¹¹ impose seven-day waiting periods on purchases of handguns and assault weapons. Florida,¹² Iowa,¹³ New Jersey,¹⁴ and Wisconsin¹⁵ have waiting periods for handgun purchases only. Connecticut imposes a waiting period only for long gun purchases.¹⁶

These waiting periods vary in length from 24 hours (for long guns in Illinois) to 14 days (for a permit to purchase a firearm in Hawaii).

(e) The American public overwhelmingly supports laws imposing a waiting period prior to the sale of a firearm. A nationwide poll conducted in June 2008 found that 86% of Americans favor such laws.¹⁷

(f) It is the purpose and intent of the [Legislative Body] in enacting this Chapter to impose a waiting period prior to sale of a firearm in [Jurisdiction]. The [Legislative Body] believes that a waiting period will help improve public safety by giving law enforcement sufficient time to conduct a background check on the prospective purchaser, and by eliminating opportunities for impulsive acts of violence.

Sec. 2 Definitions

As used in this Chapter:

[The definitions of commonly used terms, such as “Department,” “Firearm,” “Law enforcement,” “Licensed dealer,” “Person,” which are included in the Appendix should be included in this section.]

Sec. 3 Waiting period prior to firearm purchase

No licensed firearms dealer shall deliver a firearm, and no person shall take possession of a firearm from a licensed dealer, until both of the following have occurred:

(a) Ten (10) days have elapsed from the date the dealer initiated the National Instant Criminal Background Check System check of the purchaser as required by 18 U.S.C. § 922(t), after receiving a completed federal Firearms Transaction Record, Form 4473, from the purchaser; and

(b) The dealer has received notice that the purchaser or transferee has passed all background checks required by federal, state and local law.¹⁸

Sec. 4 Exceptions

Section 3 does not apply to:

(a) Any law enforcement or corrections agency, or law enforcement or corrections officer acting within the course and scope of his or her employment or official duties;

(b) A United States Marshal or member of the Armed Forces of the United States or the National Guard, or a federal official transferring firearms as required in the operation of his or her official duties;

- (c) Licensed firearms manufacturers, importers or dealers, while engaged in the course and scope of their activities as licensees, provided that the transfers are between licensees and all such licensees are properly licensed under federal, state and local law;
- (d) A gunsmith who receives a firearm for service or repair;
- (e) A properly licensed private security firm, or private security personnel, who acquire the firearms for use in the course and scope of employment; or
- (f) A common carrier, warehouseman, or other person engaged in the business of transporting or storing goods, to the extent that the possession or receipt of , or having on or about the person of any firearm is in the ordinary course of business and not for the personal use of any such person.

For suggested language regarding Sections 5 – 7, Administrative rules and regulations, Penalties, and Severability, see the Appendix.

* Where the words “[Act/Ordinance],” “[Jurisdiction],” “[Legislative Body]” or similar variations appear, simply select the appropriate designation for your jurisdiction.

¹ 18 U.S.C. § 922(t)(1).

² *Id.*

³ Criminal Justice Information Services Division of the Federal Bureau of Investigation, *National Instant Criminal Background Check System (NICS), Operations Report 12*, at http://www.fbi.gov/about-us/cjis/nics/reports/2007-operations-report/ops_report_2007.pdf.

⁴ U.S. General Accounting Office, *Gun Control: Implementation of the National Instant Criminal Background Check System* 13 (Feb. 2000), at <http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=162.140.64.21&filename=g100064.pdf&directory=/diskb/wais/data/gao>.

⁵ Cal. Penal Code §§ 12071(b)(3)(A), 12072(c)(1).

⁶ Haw. Rev. Stat. §§ 134-2(e), 134-3(a).

⁷ 720 Ill. Comp. Stat. 5/24-3(A)(g).

⁸ R.I. Gen. Laws §§ 11-47-35, 11-47.35.1, 11-47-35.2.

⁹ D.C. Code Ann. § 22-4508.

¹⁰ Md. Code Ann., Pub. Safety §§ 5-123(a), 5-124(a).

¹¹ Minn. Stat. § 624.7132, subd. 4.

¹² Fla. Const. art. I, § 8(b); Fla. Stat. § 790.0655.

¹³ Iowa Code § 724.20.

¹⁴ N.J. Rev. Stat. §§ 2C:58-2a(5)(a), 2C:58-3i.

¹⁵ Wis. Stat. § 175.35(2k)(d).

¹⁶ Conn. Gen. Stat. § 29-37a.

¹⁷ CNN/Opinion Research Corp. Poll, *Most Americans Say the Constitution Guarantees the Right to Own a Gun, Latest CNN/Opinion Research Corporation Poll Shows* (June 28, 2008), at http://www.opinionresearch.com/fileSave/CNNPR_Gun_6_28_2008.pdf.

¹⁸ If a jurisdiction chooses not to require all gun sales to be processed through a dealer, but nevertheless wants all firearms sales to be subject to a ten-day waiting period, the jurisdiction should add the following provision:

No unlicensed firearms seller shall transfer a firearm to another person, through sale, lease, or other transfer, and no person shall acquire a firearm, until ten (10) days have elapsed from the date when the seller or transferor receives notice from the Department that the purchaser or transferee has successfully passed all background checks required by federal, state or local law. To facilitate the background check, the seller or transferor must submit to the Department a completed application or notice of intent to transfer a firearm, on a form prescribed by the Department.

Appropriate exceptions, like those in LCAV's Model Law Requiring the Licensing of Firearm Owners, should be included in the revised law. LCAV is available to provide drafting assistance upon request.

G. Model Law Limiting Firearm Purchases to One Per Person Every 90 Days

This model law prohibits the purchase of more than one firearm by the same individual within a 90-day period. As discussed in the findings below, studies show that firearms that are sold in multiple sales to the same individual are frequently used in crime. Laws restricting multiple purchases of firearms prevent gun traffickers from buying guns in bulk and reselling them to prohibited purchasers, thereby helping to reduce the number of guns entering the illegal market and stem the flow of firearms between states.

Although federal law does not limit the number of guns a person may purchase in any given time period, several state and local jurisdictions currently limit multiple purchases of firearms. Purchase limitations range from 30 days to 90 days, and usually apply only to handguns. LCAV's model is based on the law in New York City, which limits all firearm sales to one per person every 90 days.

The American public strongly supports laws limiting the number of guns that may be purchased at one time.

Text of Model Law

CHAPTER 1 LIMITING FIREARM PURCHASES TO ONE PER PERSON EVERY 90 DAYS

- Sec. 1 Legislative findings, purpose and intent**
- Sec. 2 Definitions**
- Sec. 3 Limit on firearm purchases**
- Sec. 4 Limit on firearm transfers**
- Sec. 5 Records of firearm transfers**
- Sec. 6 Exceptions**
- Sec. 7 Administrative rules and regulations**
- Sec. 8 Penalties**
- Sec. 9 Severability**

Sec. 1 Legislative findings, purpose and intent

[General findings regarding gun violence throughout the U.S. are provided in the Appendix of this publication. Findings regarding the need for and benefits of this model law are provided below. However, findings in support of a law are most effective when they are specific and localized. Whenever possible, data from the jurisdiction adopting the law, including data from law enforcement, the public health community and descriptions of particularly relevant incidents, should be added.]

The [Legislative Body]^{*} hereby finds and declares:

(a) Federal law does not limit the number of guns a person may buy in any given time period. Federal law does require federally licensed firearms dealers (FFLs) to report multiple sales of handguns to the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) and other specified law enforcement agencies, and defines “multiple sales” as the sale of two or more handguns by an FFL to a non-FFL within five consecutive business days.¹ The multiple sales reporting requirement was created to enable ATF to “monitor and deter illegal interstate commerce in pistols and revolvers by unlicensed persons.”² ATF and the other law enforcement agencies receiving the reports are not charged with any investigative duties regarding those sales, however.³

(b) Studies show that firearms sold in multiple sales to the same individual purchaser are frequently used in crime.⁴ ATF crime gun trace data revealed that 22% of all handguns recovered in crime in 1999 had been transferred to a purchaser involved in a multiple sale.⁵ Crime gun trace data from 2000 showed that 20% of all retail handguns recovered in crime were purchased as part of a multiple sale.⁶

(c) A study of the sale and subsequent criminal use of handguns sold in Maryland in the 1990s revealed that handguns sold in multiple sales accounted for about a quarter of crime guns and were up to 64% more likely to be used in crime than handguns sold in single sales.⁷

(d) Jurisdictions with weaker firearms laws attract gun traffickers who make multiple purchases and resell those guns in jurisdictions with stronger firearms laws.⁸

(e) “One-gun-a-month” laws prohibit the purchase of more than one handgun per person in any 30-day period. A study of Virginia’s one-gun-a-month law demonstrated that the law was effective in reducing the number of crime guns traced to Virginia dealers. Virginia adopted its law in 1993 after the state became recognized as a primary source of crime guns recovered in states in the northeastern U.S. After the law’s adoption, the odds of tracing a gun originally acquired in the Southeast to a Virginia gun dealer (as opposed to a dealer in a different southeastern state) dropped by 71% for guns recovered in New York, 72% for guns recovered in Massachusetts, and 66% for guns recovered in New Jersey, New York, Connecticut, Rhode Island and Massachusetts combined.⁹

(f) The American public strongly supports laws limiting the number of guns that may be purchased at one time. A national poll conducted for Mayors Against Illegal Guns in the spring of 2008 found that 65% of Americans favor limiting the number of handguns an individual is allowed to purchase to one gun per month.¹⁰

(g) California,¹¹ Maryland,¹² New Jersey,¹³ Virginia,¹⁴ the District of Columbia,¹⁵ Chicago¹⁶ and New York City¹⁷ currently limit multiple purchases of firearms. In California, New Jersey, Virginia, the District of Columbia and Chicago, a person may buy only one handgun every 30 days. In Maryland, a person may buy only one handgun or assault weapon every 30 days. New York City limits all firearm purchases (not just handguns) to one per person every 90 days.

(h) It is the purpose and intent of the [Legislative Body] in enacting this Chapter to limit the number of firearms that may be purchased at any one time, thereby: 1) helping to prevent gun traffickers from buying guns in bulk and reselling them to prohibited purchasers; 2) reducing the number of guns entering the illegal market; and 3) stemming the illegal flow of firearms between jurisdictions. The [Legislative Body] believes this law will help achieve these goals.

Sec. 2 Definitions

As used in this Chapter:

[The definitions of commonly used terms, such as “Department,” “Firearm,” “Law enforcement officer,” and “Person,” which are included in the Appendix should be included in this section.]

Sec. 3 Limit on firearm purchases

No person may purchase or otherwise acquire more than one firearm from any licensed firearms dealer within any 90-day period.

Sec. 4 Limit on firearm transfers

(a) No licensed firearms dealer may transfer a firearm to any person who has purchased or acquired another firearm within the preceding 90-day period.

- (b) Any person transferring a firearm must request, and receive, approval for the sale or transfer from the Department in a manner prescribed by the Department.
- (c) Upon receiving a request for approval for the transfer of a firearm, the Department shall conduct a search of the records it maintains pursuant to Sec. 5.
- (d) The Department shall not approve the transfer of more than one firearm to the same person within any 90-day period.

Sec. 5 Records of firearm transfers

- (a) Any person transferring a firearm shall immediately report the transfer of the firearm to the Department on a form prescribed by the Department.
- (b) The Department shall maintain records of transfers of firearms for at least [5] years.

Sec. 6 Exceptions

- (a) Sections 3 and 4 shall not apply to:
 - (1) Any law enforcement or corrections agency, or law enforcement or corrections officer acting within the course and scope of his or her employment or official duties;
 - (2) A United States Marshal or member of the Armed Forces of the United States or the National Guard, or a federal official, who is required to possess a firearm in the operation of his or her official duties;
 - (3) Licensed firearms manufacturers, importers or dealers, while engaged in the course and scope of their activities as licensees, provided that the transfers are between licensees and all such licensees are properly licensed under federal, state and local law;
 - (4) A properly licensed private security firm, or private security personnel, who acquire the firearms for use in the course and scope of employment;
 - (5) A gunsmith acquiring firearms solely for the purposes of service or repair, or the lawful owner of the firearms retrieving the firearms back from such a gunsmith;
 - (6) A common carrier, warehouseman, or other person engaged in the business of transporting or storing goods, to the extent that the possession or receipt of any firearm is in the ordinary course of business, and not for the personal use of any such person;
 - (7) A person acquiring firearms by operation of law upon the death of the former owner of the firearms; or

(8) A person whose firearm was stolen or irretrievably lost and who considers it essential that the firearm be replaced immediately, if:

- a. The person provides the seller or transferor with a copy of an official police report describing the loss or theft of the firearm, if the jurisdiction requires reporting of lost or stolen firearms. The official police report must contain the name and address of the firearm owner, a description of the firearm, the location of the loss or theft, the date of the loss or theft, and the date the loss or theft was reported to the law enforcement agency. If the jurisdiction does not require the reporting of lost or stolen firearms, the person must submit an affidavit or declaration that contains the same information that is required for the police report; and
- b. The loss or theft occurred within 90 days of the person's attempt to replace the firearm, as reflected by the date of loss or theft on the official police report or, if the jurisdiction does not require the reporting of lost or stolen firearms, the date noted on the affidavit or declaration.

(b) A firearms dealer who sells or transfers a firearm to a person listed in subsection (a) shall identify, on the report the dealer prepares for the Department pursuant to Sec. 5, the applicable exception from subsection (a).

For suggested language regarding Sections 7 – 9, Administrative rules and regulations, Penalties, and Severability, see the Appendix.

* Where the words “[Act/Ordinance],” “[Jurisdiction],” “[Legislative Body]” or similar variations appear, simply select the appropriate designation for your jurisdiction.

¹ 18 U.S.C. § 923(g)(3)(A).

² U.S. General Accounting Office, *Federal Firearms Licensee Data – ATF's Compliance with Statutory Restrictions* 11 (Sept. 1996), available at <http://www.gpo.gov/fdsys/pkg/GAOREPORTS-GGD-96-174/pdf/GAOREPORTS-GGD-96-174.pdf>.

³ A November 2010 report from the U.S. Department of Justice found that long guns, rather than handguns, have become the weapons of choice for Mexican drug cartels, and gun traffickers frequently purchase long guns in multiple sales from FFLs. The report concluded that the lack of a federal reporting requirement for multiple sales of long guns has hindered ATF's ability to disrupt the flow of illegal firearms into Mexico, and recommended that multiple sales of long guns be reported. Office of the Inspector General, U.S. Dep't of Justice, *Review of ATF's Project Gunrunner* iv, 36-40 (Nov. 2010), at <http://www.justice.gov/oig/reports/ATF/e1101.pdf>. In July 2011, such a regulation took effect requiring FFLs along the southwest border to report multiple sales of certain long guns. See, e.g., Office of Public Affairs, U.S. Dep't of Justice, *Statement of Deputy Attorney General James Cole Regarding Information Requests for Multiple Sales of Semi-Automatic Rifles with Detachable Magazines*, July 11, 2011, available at <http://www.justice.gov/opa/pr/2011/July/11-dag-900.html>.

⁴ See, e.g., Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (2000) National Report* 52 (July 2002), at: <http://www.atf.gov/publications/download/ycgii/2000/ycgii-report-2000-general-findings.pdf>; Bureau of Alcohol, Tobacco and Firearms, U.S. Department of the Treasury, *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (1999) National Report* 40 (Nov. 2000), at: <http://www.atf.gov/publications/download/ycgii/1999/ycgii-report-1999-general-findings.pdf>.

⁵ *Id.*

⁶ *Youth Crime Gun Interdiction Initiative, Crime Gun Trace Reports (2000) National Report*, *supra* note 4.

⁷ Christopher S. Koper, *Crime Gun Risk Factors: Buyer, Seller, Firearm, and Transaction Characteristics Associated with Gun Trafficking and Criminal Gun Use*, Report to the National Institute of Justice 6, 83 (2007), at <http://www.ncjrs.gov/pdffiles1/nij/grants/221074.pdf>.

⁸ Douglas S. Weil & Rebecca C. Knox, *Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms*, 275 JAMA 1759, 1759-60 (1996).

⁹ Douglas S. Weil & Rebecca Knox, *Evaluating the Impact of Virginia's One-Gun-A-Month Law*, The Center to Prevent Handgun Violence 1, 4-6 (Aug. 1995). In 2004, the Virginia legislature adopted measures backed by the National Rifle Association that significantly weaken the law by allowing concealed handgun permit holders and persons who purchase handguns through private sales to purchase more than one handgun per month. Va. Code Ann. § 18.2-308.2:2(P)(2).

¹⁰ Greenberg Quinlan Rosner Research & the Tarrance Group for the Mayors Against Illegal Guns, *Americans Support Common Sense Measures to Cut Down on Illegal Guns* 6 (Apr. 10, 2008), at: http://www.mayorsagainstillegalguns.org/downloads/pdf/polling_memo.pdf.

¹¹ Cal. Penal Code §§ 12072(a)(9)(A), 12072(c)(6).

¹² Md. Code Ann., Pub. Safety § 5-128.

¹³ N.J. Stat. Ann. §§ 2C:58-2.a(7), 2C:58-3.i.

¹⁴ Va. Code Ann. § 18.2-308.2:2(P).

¹⁵ D.C. Code Ann. § 7-2502.03(e).

¹⁶ Chicago, Ill. Code § 8-20-160.

¹⁷ New York, N.Y. Admin. Code, § 10-302.1(a), (b).

III. Legal Challenges & Other Opposition Arguments

A. Legal Challenges

1. The Second Amendment

a. The *Heller* & *McDonald* Decisions

In June 2008, in *District of Columbia v. Heller*,¹ the U.S. Supreme Court held for the first time that the Second Amendment to the U.S. Constitution protects the right of responsible, law-abiding individuals to possess a handgun in the home for purposes of self-defense. In a 5-4 ruling, the Court struck down Washington, D.C.'s decades-old ban on handgun possession, and the District's requirement that firearms in the home be stored unloaded and disassembled and bound by a locking device (a requirement which had no exception for self-defense).

The Supreme Court also held, however, that the right conferred by the Second Amendment is not unlimited, and should not be understood as "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."² The Court identified a non-exhaustive list of regulatory measures that it deemed "presumptively lawful" under the Second Amendment, including: 1) "longstanding prohibitions" on the possession of firearms by felons and the mentally ill; 2) laws forbidding firearm possession in sensitive places such as schools and government buildings; and 3) laws imposing conditions and qualifications on the commercial sale of firearms.³ In addition, the Court declared that its analysis should not be read to suggest the invalidity of laws regulating the storage of firearms to prevent accidents, and concluded that the Second Amendment is also consistent with laws banning "dangerous and unusual weapons" not in common use at the time, such as M-16 rifles and other firearms that are most useful in military service.⁴

In June 2010, the U.S. Supreme Court announced its decision in *McDonald v. City of Chicago*, holding in a 5-4 ruling that the Second Amendment applies to state and local governments in addition to the federal government.⁵

The Supreme Court in *McDonald* reiterated that the Second Amendment protects the right to possess a handgun in the home for purposes of self-defense, and that a wide variety of gun laws are constitutionally permissible. The Court repeated that "the right to keep and bear arms is not 'a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose,'" and listed again the presumptively lawful measures identified in *Heller*.⁶

b. Post-*Heller* Litigation

As expected, the U.S. Supreme Court's decision in *Heller* has resulted in a flood of lawsuits. Numerous criminal defendants have challenged their indictments and convictions for violating federal and state firearms laws, alleging that the criminal statutes violate the Second Amendment. A number of plaintiffs have also filed civil lawsuits challenging state or local governments' refusals to grant licenses to purchase or own firearms or to allow them to register firearms. However, these challenges have almost uniformly failed, and courts have held that

existing state and local laws similar to the model laws in this publication do not violate the Second Amendment.

Courts have rejected a number of challenges to firearms licensing and registration laws since the Supreme Court's decision in *Heller*. In *Heller v. District of Columbia (Heller II)*, the District Court for the District of Columbia addressed a Second Amendment challenge to the ordinances Washington, D.C. adopted in response to *Heller*. Those ordinances, like the model laws in this publication, require firearm owners to, among other things:

- Complete a firearm safety course;
- Demonstrate knowledge of the District's laws regarding firearms;
- Register all firearms they own; and
- Report lost or stolen firearms to law enforcement.

The ordinances also limit the number of handguns a person may register to one per month. The District Court rejected the plaintiffs' claims and upheld every aspect of the ordinances, holding that they are substantially related to the important governmental interest of promoting public safety. That opinion has been appealed to the D.C. Circuit Court of Appeals.⁷

The Seventh Circuit also addressed the constitutionality, under *Heller*, of an ordinance requiring the registration of all firearms in *Justice v. Town of Cicero*.⁸ The Court held that the registration ordinance does not violate the Second Amendment, emphasizing that the ordinance merely regulates, but does not prohibit, gun possession in the jurisdiction.

Likewise, several courts have upheld New York's law requiring an individual to acquire a license to possess a handgun in the home. In *People v. Nivar*, for example, a New York Supreme Court judge rejected a criminal defendant's Second Amendment challenge to New York's licensing laws, concluding that, "on their face, [the licensing statutes] are constitutional and do not run afoul of *Heller*."⁹

Similarly, in *In re Dubov*, the plaintiff appealed the denial of his permit to purchase a handgun, but the court rejected his Second Amendment challenge to the New Jersey permitting statute. The court held that *Heller* had no impact on the case, pointing out that the Supreme Court's opinion in *Heller* had stated that it did not require invalidation of licensing statutes.¹⁰

Additional cases are pending in various lower courts throughout the country. For more in-depth information about post-*Heller* litigation, please visit LCAV's *Post-Heller Litigation Summary*, http://www.lcav.org/content/post-heller_summary.pdf.

2. State Right to Bear Arms

Most state constitutions recognize a right to bear arms. Many of these provisions specifically recognize an individual right to bear arms or have been interpreted by the courts to protect an

individual right. However, every state court that has considered a state right to bear arms challenge to a firearms law has determined that the right at issue is not absolute.¹¹

Five states (California, Iowa, Maryland, Minnesota and New Jersey) and the District of Columbia have no right to bear arms provision.¹² Three additional states (Kansas, Massachusetts and New York¹³) have a right to bear arms only for militia service.

Nearly every state with an individual right to bear arms clause in its constitution, or a similar statutory provision, uses a reasonableness test to determine whether a state or local law violates this right.¹⁴ When this test is applied, firearms regulations are generally upheld against state right to bear arms challenges. For instance, Article I, section 4 of the Constitution of the State of Ohio provides in part: “The people have the right to bear arms for their defense and security....” However, Ohio courts have repeatedly rejected Article I, section 4 challenges to firearms regulations such as those restricting certain classes of persons from possessing firearms, and requiring firearms dealers to be licensed and keep certain records.¹⁵

For more information about how courts have interpreted a particular state’s right to bear arms provision, see LCAV’s *Summary of State Right to Bear Arms Provisions*, http://www.lcav.org/states/state_right_to_bear_arms.asp.

3. Preemption and Local Authority to Regulate Firearms and Ammunition

Local governments considering new firearm-related legislation must determine whether they have the authority to act in a particular area. In some cases, this authority has been preempted by the state.¹⁶

The most direct way preemption can occur is through express preemption. Regulatory authority is expressly preempted when a state provides explicit language in a statute or constitution that it intends to remove lower governmental authority to regulate a particular area.

Even when a law does not express intention to preempt an area of regulation, courts may find that there was an intention to do so. This is known as implied preemption. The most common indication of implied preemption is when a legislative scheme on a particular subject is so pervasive that it leaves no room for further regulation by a lower level of government.

States differ considerably in how and to what extent they preempt the regulation of firearms and ammunition by the local governments within their boundaries.

Most states have expressly preempted the broad area of firearms and ammunition legislation.¹⁷ In the following states, however, local governments retain authority, in varying degrees, to regulate firearms and ammunition:

Connecticut	Illinois	New Jersey
California	Massachusetts	New York
Hawaii	Nebraska ¹⁸	

Specific questions about whether a particular type of local regulation may be preempted in any given state involve an analysis of existing case law. Local jurisdictions should consult with counsel to determine the extent of their regulatory authority. LCAV is available to work with public officials and advocates on specific questions relating to their jurisdiction.

B. Other Opposition Arguments

Although opponents of common sense gun laws usually focus on the Second Amendment and other legal arguments, they also frequently raise policy-based claims. Some of the policy arguments that are raised with respect to the model laws in this publication are discussed below. For more general information about common opposition arguments to gun violence prevention measures, and the facts that counter these arguments, see LCAV's *10 Myths About Gun Violence in America*, http://www.lcav.org/publications-briefs/reports_analyses/Ten_Myths.pdf.

1. Laws Requiring Background Checks

Opponents of laws requiring background checks on firearm purchasers typically claim that these laws unduly burden or inconvenience gun buyers. However, the burden imposed on law-abiding citizens by background checks is minimal when compared with the public safety benefits of such laws. As discussed in the model law findings, from the inception of the Brady Act on March 1, 1994, through December 31, 2009, over 1.9 million applicants were denied a firearm via a simple background check that demonstrated the person was a threat to society with a firearm in his or her hands.¹⁹ The costs of gun violence to our nation – approximately \$100 billion each year²⁰ – also dramatically outweigh the “burden” of a simple background check on a prospective gun owner.

2. Registration Laws

Opponents of laws requiring gun registration often claim that such laws will lead to government confiscation of privately-owned firearms by law-abiding citizens. There is simply no evidence to support such a claim, however. As discussed in the findings, the goal of registration laws is to help law enforcement:

- 1) Quickly trace firearms recovered at crime scenes;
- 2) Discourage illegal firearm sales by creating accountability for gun owners; and
- 3) Protect police officers responding to an incident by providing them with information about whether firearms may be present at the scene.

Such laws are not intended to deprive law-abiding citizens of their firearms.

Moreover, if registration laws really led to confiscation of lawfully-owned guns, such confiscation would have taken place in jurisdictions that already require gun owners to register all, or at least specific types of, their guns. In states like Hawaii, New Jersey, Maryland,

California, and cities including Washington, D.C., Chicago and Omaha, law-abiding gun owners are not being harassed or having guns taken from them.

Finally, this slippery slope argument is no longer legally tenable in the wake of the U.S. Supreme Court's decisions in *District of Columbia v. Heller* and *McDonald v. Chicago*, which recognize a limited individual right under the Second Amendment to possess a handgun in the home for self-defense.

3. Laws Regulating Firearms Dealers and Ammunition Sellers

Opponents of laws regulating firearms dealers and ammunition sellers argue that these laws create undue burdens for such sellers, especially small businesses, by increasing the costs of doing business. The benefits to public safety of such laws, however, clearly outweigh the costs imposed on the gun industry.

Dealer regulations – from on-site security measures, to liability insurance and employee background checks – impose only modest costs on businesses. Most responsible dealers already utilize these measures and should welcome the elimination of competition from irresponsible dealers who present a danger to the public by failing to follow suit.

As discussed in the model law, research shows that firearms dealers are a major source of trafficked guns. The Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF) comprehensive report of firearms trafficking in 2000 found that federal licensees were associated with over 40,000 illegally trafficked guns, concluding that "FFLs' access to large numbers of firearms makes them a particular threat to public safety when they fail to comply with the law."²¹ Licensing laws and other dealer regulations are an effective way to address this problem. A 2009 study found that cities in states that comprehensively regulate gun dealers and cities where these businesses undergo regular compliance inspections have significantly lower levels of gun trafficking than other cities.²²

State and local governments across the country generally require the licensing of a host of retail trade and service businesses, including barbers, cosmetologists, tanning salons, restaurants and acupuncturists. It simply makes sense to similarly license and regulate sellers of deadly products like firearms and ammunition to protect public safety.

4. Laws Requiring the Reporting of Lost or Stolen Firearms

Persons opposed to laws requiring the reporting of lost or stolen firearms sometimes argue that these laws will lead law enforcement to unfairly punish otherwise law-abiding gun owners who fail to report a weapon lost or stolen. As discussed in the model law, however, one of the goals of lost or stolen reporting laws is to deter gun trafficking, since some criminals claim that their firearms were lost or stolen to hide involvement in a crime when their guns are found at a crime scene. Prosecutorial discretion allows law enforcement officials to focus only on persons suspected of falsely claiming the loss or theft of a firearm, rather than persons who innocently fail to comply with the reporting requirement. Thus, it is unlikely that gun owners who make a good faith effort to comply, even outside the reporting time frame provided in the law, would be

prosecuted, and there is no evidence to suggest that an abuse of prosecutorial discretion has occurred in jurisdictions that have adopted such laws.

Opponents also argue that laws requiring the reporting of lost or stolen firearms unreasonably burden gun owners. However, laws that require the reporting of lost or stolen guns are no more burdensome than the laws in many states that require motorists to report serious automobile accidents. The highly lethal nature of firearms – like automobiles – justifies an increased level of responsibility on the part of the owner over that required for other, less dangerous products.

¹ *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783 (2008).

² *Id.* at 2816.

³ *Id.* at 2816-17, 2817 n. 26.

⁴ *Id.* at 2817. Unfortunately, *Heller* did not determine the test or level of scrutiny that lower courts must use to determine whether a gun law violates the Second Amendment. Courts use varying levels of scrutiny to determine whether a particular law violates a constitutional right, and the specific level of scrutiny that applies depends on the right that is allegedly infringed, as well as the type of law at issue. Most laws are subject to a “rational basis” test, meaning that they are constitutional so long as they are rationally related to a legitimate government interest. Courts have identified other tests appropriate to review a statute’s constitutionality, notably: 1) “intermediate scrutiny,” which generally requires that: a) the asserted governmental interest be “important or substantial” or “significant”; and b) the fit between the challenged regulation and the proffered objective be reasonable, not perfect; and 2) “strict scrutiny,” which is the most stringent of the traditional tests and requires finding a law unconstitutional unless it is “narrowly tailored” to serve a “compelling” government interest.

⁵ *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010).

⁶ *Id.* at 3047. Although the Court in *McDonald* used the term “fundamental” to describe the right to bear arms under the Second Amendment, it again did not determine the level of scrutiny to be used to determine whether a gun law violates the Second Amendment. *See Id.* at 3036-3037, 3040-3042.

⁷ 698 F. Supp. 2d 179 (D.D.C. 2010), on appeal as No. 10-7036 (D.C. Cir. Filed Apr. 2, 2010).

⁸ 577 F.3d 768 (7th Cir. 2009).

⁹ 915 N.Y.S.2d 801, 806 (N.Y. Supt. Ct. 2011). This holding is consistent with decisions by other state courts evaluating New York’s licensing laws. *See People v. Foster*, 915 N.Y.S.2d 449 (N.Y. Crim. Ct. 2010); *People v. Perkins*, 880 N.Y.S.2d 209 (N.Y. App. Div. 2009); *People v. Abdullah*, 870 N.Y.S.2d 886 (N.Y. Crim. Ct. 2008); *People v. Ferguson*, 873 N.Y.S.2d 513 (N.Y. Crim. Ct. 2008). *See Moreno v. New York City Police Dep’t*, 2011 U.S. Dist. LEXIS 76129 (S.D.N.Y. May 9, 2011) (“New York courts have found the regulations in P.L. §§ 265.00 and 400.00 to be constitutional and consistent with *Heller*...Accordingly, so long as Division’s denial of Moreno’s application comports with New York licensing laws - which regulate, but do not prohibit, firearm possession in the home — this Court finds that the denial is consistent with *Heller* and does not infringe upon Moreno’s Second Amendment rights.”).

¹⁰ 410 N.J. Super. 190 (N.J. Sup. Ct. App. Div. 2009). A few lawsuits have been filed since *Heller* challenging laws similar to LCAV’s model law regulating gun dealers and ammunition sellers. For example, Chicago enacted an ordinance prohibiting the sale of firearms, and two lawsuits have been filed challenging that ordinance. *Benson v. Chicago*, No. 10-4184 (N.D. Ill., Filed July 6, 2010); *Second Amendment Arms v. Chicago*, No. 10-4257 (N.D. Ill., Filed Aug. 3, 2010). While the courts have not yet ruled in those two cases, *Heller* and *McDonald* described laws imposing conditions and qualifications on the commercial sale of firearms as “presumptively valid.”

¹¹ *See* Legal Community Against Violence, *State Right to Bear Arms Provisions*,

http://www.lcav.org/states/state_right_to_bear_arms.asp.

¹² *Id.* The District of Columbia has no separate constitution and has not adopted any laws establishing a right to bear arms.

¹³ *Id.* In New York, the state right to bear arms is conferred by statute, not by the state’s constitution. *See* N.Y. Civ. Rights Law art. 2, § 4.

¹⁴ Legal Community Against Violence, *supra* note 11.

¹⁵ Similarly, in *State v. Mendoza*, the Supreme Court of Hawaii rejected a challenge to Hawaii’s statute requiring a person to obtain a permit before acquiring a firearm under the state’s right to bear arms. 920 P.2d 357 (Haw. 1996). The court found that the state’s police power allows it to regulate the right in a reasonable manner, and that the

permitting requirement was “rationally related to the legitimate government interest of ensuring that only those who are mature, law abiding, competent citizens possess firearms.” *Id.* at 368.

¹⁶ This discussion focuses on state preemption of local laws. The federal government has the power to preempt state and local authority as well, but federal preemption is typically not a barrier to state and local gun laws. With limited exceptions, Congress has not expressly preempted the area of firearms or ammunition regulation. Moreover, courts have found that no comprehensive federal scheme exists in the area of firearms and ammunition regulation.

Richmond Boro Gun Club, Inc. v. City of New York, 896 F. Supp. 276, 285 (E.D.N.Y. 1995), *aff’d*, 97 F.3d 681 (2d Cir. 1996) (rejecting federal preemption challenge to New York City’s assault weapon ban).

¹⁷ The existence of such express preemption laws is not necessarily definitive in all states, however. Colorado enacted express preemption laws which were found by state courts to violate the “home rule” authority of local governments in that state. *City & County of Denver v. State*, No. 03-CV-3809 (Denver Dist. Ct. Nov. 5, 2004) (upholding Denver’s home rule authority to regulate open carrying of firearms, assault weapons and Saturday night specials despite state law expressly preempting regulation of firearms.), *aff’d*, 139 P.3d 635 (Colo. 2006); *contra City of Cleveland v. Ohio*, 128 Ohio St. 3d 135, 2010-Ohio-6318, 942 N.E.2d 370 (rejecting Cleveland’s home rule challenge to statute preempting local firearms laws). “Home rule” generally refers to local governments’ authority to self-regulate. Local governments in most states enjoy home rule power to varying degrees.

¹⁸ In California and Nebraska, state law expressly preempts some areas of regulation. See Cal. Gov’t Code § 53071 (preempting registration or licensing of commercially manufactured firearms); Cal. Gov’t Code § 53071.5 (preempting regulation of the manufacture, sale or possession of imitation firearms); Cal. Penal Code § 12026(b) (prohibiting permit or license with respect to the purchase, ownership, possession or carrying of a handgun in a residence or place of business); and Neb. Rev. Stat §§ 14-102, 15-255, 16-227, 17-556 (prohibiting local regulation of the carrying of handguns).

¹⁹ Bureau of Justice Statistics, U.S. Dep’t of Justice, *Background Checks for Firearms Transfers, 2009—Statistical Tables* (Oct. 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/html/bcft/2009/bcft09st.pdf>.

²⁰ Philip J. Cook and Jens Ludwig, *Gun Violence: The Real Costs* 115 (2000).

²¹ Bureau of Alcohol, Tobacco and Firearms, U.S. Dep’t of the Treasury, *Following the Gun: Enforcing Federal Laws Against Firearms Traffickers* ix, x (June 2000), available at http://www.mayorsagainstillegalguns.org/downloads/pdf/Following_the_Gun%202000.pdf.

²² Daniel W. Webster et al., *Effects of State-Level Firearm Seller Accountability Policies on Firearms Trafficking*, 86 J. Urb. Health 525 (July 2009), available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2704273/pdf/11524_2009_Article_9351.pdf.

IV. Appendix – Generic Provisions

LCAV has drafted the following generic provisions to be used within the model laws presented in this publication.

Sec. ____ Findings

[The findings below describe the problem of gun violence generally in the United States. A jurisdiction may choose to include these findings, in addition to local data and the findings at the beginning of the particular model law being adopted, in order to describe the toll that gun violence exacts throughout America.]

The [Legislative Body] hereby finds and declares:

(a) Regarding gun violence in general:

(1) In 2007, the most recent year for which statistics are available, over 31,000 Americans died from firearm-related injuries – an average of more than 85 deaths each day¹ – and nearly 70,000 others were treated for non-fatal gunshot wounds.² On average, guns cause the death of over 20 young people (those 24 years of age and under) each day in the U.S.³

(2) Guns were used to commit over 385,000 crimes in the U.S. in 2007, and nearly 70% of all murders that year were committed with a firearm.⁴ Records kept by the Federal Bureau of Investigation (FBI) show that in 2007, 190,514 robberies and 183,153 aggravated assaults were committed with firearms.⁵ That year, 12,632 people were victims of firearm homicide – 68.8% of all homicides nationwide.⁶

(3) Medical costs related to gun violence are estimated at \$2.3 billion annually, half of which are borne by American taxpayers.⁷ Once all the direct and indirect medical, legal and societal costs are factored together, the annual cost of gun violence in our nation amounts to \$100 billion.⁸

[LCAV believes the model laws in this publication would be most effective if, as written, they were applied to all firearms. However, any of the model laws or specific sections of the model laws could be modified to apply to handguns only. For this reason, we have included the following findings addressing the specific dangers posed by handguns.]

(b) Regarding handguns:

(1) An FBI report concluded that in 2009, over 70% of firearms murders were committed with handguns.⁹

(2) From 1993 to 2001, an average of 737,360 violent crimes were committed with handguns in the U.S. each year, making handguns seven times more likely to be used to commit violent crimes than other firearms.¹⁰

(3) Women face an especially high risk of handgun violence.¹¹ In 2008, 71% of female firearm homicide victims were killed with a handgun.¹²

(4) A California study found that in the first year after the purchase of a handgun, suicide was the leading cause of death among handgun purchasers.¹³ In the first week after the purchase of a handgun, the firearm suicide rate among purchasers was 57 times as high as the adjusted rate in the general population.¹⁴

Sec. ____ Definitions

As used in this Chapter:

(a) “Ammunition” means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm, or cartridges, or projectiles capable of being fired from a firearm, but shall not include:

(1) Ammunition that can be used solely in antique firearms; or

(2) Blank cartridges.

(b) “Department” means the *[A jurisdiction should specify the particular law enforcement or administrative agency or official within the jurisdiction that shall be responsible for administering and enforcing the law. A local jurisdiction may wish to identify the local police department or the local Chief of Police or Sheriff, whereas a state may identify the Attorney General, State Police, Department of Public Safety, or other agency or official holding statewide authority to administer and enforce the jurisdiction’s weapons control laws. In some cases, a state may delegate particular powers and obligations of the “Department” under these models to a local agency or official.]*.

(c) “Firearm” means any weapon or device designed to be used as a weapon, which will, is designed to, or may readily be converted to expel a projectile or projectiles by the action of an explosive, explosion, or other means of combustion, or the frame or receiver of such a device, provided that the term “firearm” shall not include an “antique firearm” as defined in section 921(a)(16) of Title 18 of the United States Code, or a weapon that has been rendered permanently inoperable (incapable of being readily restored to a firing condition).

(d) “Handgun” means any firearm capable of being fired with one hand or designed to be fired with one hand; or any firearm having a barrel less than 16 inches or an overall length of less than 26 inches; or any pistol, revolver, or firearm capable of being concealed upon the person; or any combination of parts from which one of the above can be assembled.

(e) “Law enforcement officer” means any person employed by the United States, or a state, county, city, municipality, village, township, or other political subdivision as a police officer, peace officer, or in some like position involving the enforcement of the law and protection of the public interest.

(f) “Licensed firearms dealer,” “licensed dealer,” or “dealer” means a person who has a valid federal firearms dealer license, and all additional licenses required by state or local law to engage in the business of selling or transferring firearms.

(g) “Person” means any individual, corporation, company, association, firm, partnership, club, organization, society, joint stock company or other entity.

Sec. ____ Administrative rules and regulations

The Department shall have the authority to promulgate rules and regulations for the implementation of this Chapter and to prescribe all forms and the information required thereon.

Sec. ____ Penalties

[Penalties for the violation of provisions of these laws may vary based on the law enforcement and policy needs of each jurisdiction. The language below makes each violation of any provision of these laws a misdemeanor. However, states may wish to consider making violations of these laws a felony. Some, but not all, local jurisdictions also have the authority to make a violation a felony or infraction. For example, a jurisdiction may wish to strengthen penalties for second and subsequent violations of a law by imposing higher fines and/or longer lengths for terms of imprisonment. Jurisdictions are encouraged to consult with law enforcement to develop appropriate penalties.]

Any person violating any of the provisions of this Chapter shall be guilty of a misdemeanor, punishable by a fine of not more than \$1,000 or by imprisonment for a period not exceeding six months, or both. Such person shall be guilty of a separate offense for each and every day during any portion of which a violation of any provision of this Chapter is committed or continued by such person, and shall be punishable accordingly.

In addition to any other penalty or remedy, the Department shall report any violation of this Chapter by a licensed firearms dealer to the Bureau of Alcohol, Tobacco, Firearms & Explosives within the U.S. Department of Justice *[and to the relevant state agency, if the jurisdiction adopting this law is a local jurisdiction]*.

[Optional: If the jurisdiction requires firearms dealers to obtain a license or permit, the following language may be added: In addition to any other penalty or remedy, the Department shall have the authority, after notice and a hearing, to revoke the permit of any licensed firearms dealer found to be in violation of this Chapter.

Sec. ____ Severability clause

If any section, subsection, sentence or clause of this Chapter is for any reason declared unconstitutional or invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the constitutionality, validity or enforceability of the remaining portions of this Chapter or any part thereof. The [Legislative Body] hereby declares that it would have

adopted this Chapter notwithstanding the unconstitutionality, invalidity or unenforceability of any one or more of its sections, subsections, sentences or clauses.

¹ Nat'l Ctr. for Injury Prevention & Control, Ctrs. for Disease Control & Prevention, *Web-Based Injury Statistics Query and Reporting System (WISQARS) Injury Mortality Reports, 1999-2007*, (2010), at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html.

² Nat'l Ctr. for Injury Prevention & Control, Ctrs. for Disease Control & Prevention, *Web-Based Injury Statistics Query and Reporting System (WISQARS) Nonfatal Injury Reports* (2010), at <http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html>.

³ *WISQARS Injury Mortality Reports, 1999-2007*, *supra* note 1.

⁴ U.S. Dep't of Justice, Bureau of Justice Statistics, *Key Facts at a Glance: Crimes Committed with Firearms, 1973-2007*, at <http://bjs.ojp.usdoj.gov/content/glance/tables/guncrimetab.cfm>.

⁵ *Id.*

⁶ *WISQARS Injury Mortality Reports, 1999-2007*, *supra* note 1.

⁷ Philip Cook et al., *The Medical Costs of Gunshot Injuries in the United States*, 282 JAMA 447 (Aug. 4, 1999), at <http://jama.ama-assn.org/content/282/5/447.full.pdf+html>.

⁸ Philip Cook and Jens Ludwig, *Gun Violence: The Real Costs* 115 (2000).

⁹ Criminal Justice Information Services Division, Federal Bureau of Investigation, *Crime in the United States 2009, Expanded Homicide Data Table 11*, at http://www2.fbi.gov/ucr/cius2009/offenses/expanded_information/data/shrtable_11.html.

¹⁰ Office of Justice Programs, U.S. Department of Justice, *Bureau of Justice Statistics Special Report, National Crime Victimization Survey, 1993-2001 -- Weapon Use and Violent Crime* 3 (Sept. 2003), at <http://bjs.ojp.usdoj.gov/content/pub/pdf/wuvc01.pdf>.

¹¹ Garen J. Wintemute et al., *Mortality among Recent Purchasers of Handguns*, 341 New Eng. J. Med. 1583, 1585 (Nov. 18, 1999).

¹² Violence Policy Center, *When Men Murder Women: An Analysis of 2008 Homicide Data* 7 (Sept. 2010), at <http://www.vpc.org/studies/wmmw2010.pdf>.

¹³ Wintemute, *supra* note 11, at 1583-84.

¹⁴ *Id.* at 1585.

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